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The Rule of Reason Approach in Discriminatory Practices: Airlines and Telecommunications Industry Sector

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Abstract

Discriminatory practices are standard in business competition and are not prohibited as long as they do not cause unfair competition. This paper will discuss three Business Competition Supervisory Commission (KPPU) decisions in 2020 related to alleged discriminatory practices committed by business actors. The subject matter in this paper is how the actions of business actors can fulfil the elements of violation and how the application of the rule of reason approach in Article 19 letter d of the Competition Law (1999) in the 2020 KPPU Decisions. This research is descriptive normative research. The data used in the book, articles, the new paper analyzed the Competition Law (1999), the Airlines law (2009), the Electronic Information and Transactions Law (2008, amendments 2016 & 2024), and the Hajj and Umarah Law (2019), as well as interview an expert and KPPU. The interesting findings found that acts of discrimination cause obstacles in vertical business relations in different but interrelated relevant markets and often occur in the essential facilities sector. By using the rule of reason approach, KPPU found that discriminatory practices will be more effective if the business actor is in a dominant position or even occupies a monopoly position. Then, the three decisions in this discussion are equally suspected of violating Article 19 letter d on discriminatory practices. Then, related to the relevant market, the three cases have different markets, and also all three have vertical relationships with other business actors.

Keywords: Airline and Telecommunications Industry, Discriminatory Practices, Rule of Reason

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Introduction

In the realm of competition law, the "rule of reason" is a legal doctrine used to assess whether certain business practices are anti-competitive and, therefore, illegal. Under this approach, instead of deeming practices illegal per se, authorities consider the context and the actual or potential impact on competition. The rule of reason involves a thorough analysis of the purpose of the practice, its effects on competition, and any justifications provided by the companies involved (Jemarut 2020; Brown, L., & Kim 2023).

Discriminatory practices (Effendi, 2020), are actions that can provide obstacles to business competition in a fair market and are not based on the principles of business competition. Unfair discriminatory practices have an impact

on the creation of unfair business competition at the horizontal level, in the market of perpetrators of discriminatory practices, and the vertical level, in the market of victims of discriminatory practices, (Pasqua, 2023). By applying the rule of reason, authorities can carefully evaluate these discriminatory practices to determine their true impact on market fairness and competition (Volpin & Maximiano, 2020). This comprehensive evaluation allows regulators to differentiate between practices that genuinely harm competition and those that might have pro-competitive justifications, such as efficiencies that benefit consumers or innovations that drive market growth (Spulber, 2023).

The Business Competition Supervisory Commission (or "KPPU") decided that there were 3 cases related to alleged discriminatory practices by business actors based on Article 19 letter d of the Competition Law (1999). The alleged discriminatory practices occurred in the airline and telecommunications industry sectors (Jayusman & Setianingrum, 2023). Based on the three KPPU decisions, the author will analyze three decisions: one declared to violate Article 19 of the Competition Law (1999), while the other declared not to violate Article 19 letter d of the Competition Law (1999) (Sabirin & Herfian, 2021). Of the three cases raised, there are similarities in the objects of cases that occurred in 2020, namely that discriminatory practices occurred and were carried out by companies related to essential facilities.

Essential Facility refers to the concept that a business actor has a better facility than other business actors in the relevant market (Parluhutan 2021). A facility falls into the "essential facility" category if it is crucial, uses modern technology, and is efficient for competition. Wardhana, in his research, explained that it is because competitors cannot compete effectively in the relevant market without the Facility (Wardhana 2018). Modern and efficient critical facilities are key infrastructure features fundamental to economic growth in developed and developing countries (Policy, 2006). The types of critical facilities are port facilities, television program listings, bank check-clearing facilities, computer reservation systems, airports, telecommunication networks, electricity transmission networks, natural gas pipelines, and performing rights societies (Massadeh, 2011).

The concept of essential facilities is particularly important in ensuring that dominant business actors do not abuse their position by restricting access to these critical infrastructures (Jenny, 2021). When a business controls an essential facility and denies or limits access to competitors, it can significantly impede competition and innovation within the market. This obstacle is the reason why regulatory frameworks often require the owner of an essential facility to provide fair and reasonable access to other market participants. The goal is to prevent monopolistic

practices and promote a level playing field, thereby fostering a competitive environment that benefits consumers through better services and lower prices. Therefore, the regulation and oversight of essential facilities are crucial components of maintaining a healthy, competitive market structure (Deutscher, 2022).

KPPU ruled that PT Garuda Indonesia (Persero) Tbk has been proven to have violated Article 19 letter d of the Competition Law (1999) in the case of Alleged Discriminatory Practices of PT Garuda Indonesia (Persero) Tbk related to the Selection of Umrah Ticket Sales Partners to and from Jeddah and Medina (KPPU RI 2022). PT Garuda Indonesia (Persero) Tbk and PT Lion Mentari Airlines (Lion Air Group) were also found guilty by KPPU. KPPU stated that Lion Air Group was proven to have discriminated about the sale of cargo capacity for freight transportation services from several airports, including Hang Nadim Airport to Soekarno-Hatta Airport, Hang Nadim Airport to Halim Perdana Kusuma Airport, Hang Nadim Airport to Juanda Airport, and Hang Nadim Airport to Kualanamu Airport (Hukumonline, 2022).

Netflix experienced rapid growth amid this development (Hadida et al. 2021; Widia, Rosanensi, and Rahmawati 2021), there was news that PT Telekomunikasi Indonesia (Persero) Tbk and PT Telekomunikasi Seluler had committed discriminatory practices against Netflix. However, KPPU decided that Telkom did not violate Article 19 letter d of the Competition Law (1999) on Discriminatory Practices. PT Telekomunikasi Indonesia (Persero) Tbk and PT Telekomunikasi Seluler allegedly discriminated against Netflix and gave more opportunities to Indihome in their position as fellow internet service providers (Kompas, 2022).

The three cases were both resolved using the rule of reason approach. However, the resulting decisions were different where one case was found to have discriminatory practices but did not violate Article 19 letter d of the Competition Law (1999). Meanwhile, the other case was found to have discriminatory practices but violated Article 19 letter d of the Competition Law (1999). In the rule of reason approach, it is necessary to show the motive and impact to prove the element of causing monopolistic practices and unfair business competition. Therefore, the behaviour of business actors, as stipulated in Article 19 letter d, cannot be said to be an act that is prohibited unless the anti-competitive impact can be proven based on KPPU decision Number 06/KPPU-L/2020. The rule of reason method must be practised through an evidentiary process that begins with defining the relevant market. Then, KPPU will assess the dominance or market power of the product suspected of discriminatory practices. Such what explained by Jemarut's research that "it is necessary to assess the impact of competition resulting from the business

actions of business actors in the relevant market that have resulted in monopolistic practices and unfair business competition” (Jemarut, 2020).

Zhang & Lee (2022) in their research entitled "Rule of Reason in Financial Services: A Comparative Analysis". This study explores the application of the rule of reason in discriminatory practices in the financial and banking sectors (Zhang et al., 2022). A similar study by Martinez & Nguyen (2023) is titled "Educational Discrimination and the Rule of Reason: A Legal Analysis". The study examines the application of the rule of reason in discriminatory practices in the education and training sector. Focus on industries directly related to human and social development (Martinez et al., 2023). Another similar research conducted by Brown & Kim (2023) titled "Agricultural Practices and the Rule of Reason: Implications for Food Security" focuses on the application of the rule of reason in discriminatory practices in the agricultural and food sectors (Brown, L., & Kim 2023). Focus on fundamentally different industries, such as airline and telecommunications, with stricter regulations and significant systemic risks. This focus provides new insights into how competition policies are implemented in a highly regulated context and significantly impact the global economy.

This paper will provide information and international contributions regarding how Indonesia applies the rule of reason approach to discriminatory practices in the airline and telecommunications industry sectors. Given that this research theme is rare, no one has yet discussed it in depth, specifically in these sectors.

Research Problems

Based on the background of the problem, it is necessary to conduct research related to how the actions of business actors can fulfil violations of Article 19 letter d of the Competition Law (1999) in KPPU decisions in 2020 and how the discriminatory practices give impact competition using the rule of reason approach (Sanjaya, 2020), in these decisions. Article 19, in particular, deals with the abuse of dominant positions in the market. Letter d of this article explicitly prohibits discriminatory practices, which can include actions such as; discriminatory pricing, exclusive contracts, preferential treatment, and blocking market entry. In this case, one thing that makes the present research differ from the previous studies is that the researcher will photograph and analyze the content of three (3) KPPU Decisions that occurred consecutively in 2020 related to discriminatory practices.

Research Methods

This research employed normative legal research design using concepts and norms about discrimination derived from legal and non-legal materials (Soekanto, 2006). Legal materials were obtained from concepts and standards in the Competition Law (1999), including the rule of reason legal approach to determine whether specific business practices or agreements are anticompetitive and illegal in KPPU decisions, discriminatory practices, and market control. The nature of the research used by the author was descriptive. According to Soekanto, descriptive research provides as complete data as possible about specific conditions, people, or symptoms (Soekanto, 2006). In this research, the author described the discriminatory practices committed by the reported persons and the application of the rule of reason approach in the 2020 KPPU Decisions, especially Decision Number 06/KPPU-L/2020, Decision of KPPU Case Number 07/KPPU-I/2020 and Decision of KPPU Case Number 08/KPPU-I/2020. Legal materials in the form of regulations that were analyzed included the Competition Law (1999), The Airlines Law (2009), the Electronic Information and Transactions Law (2008, amendments 2016 & 2024), and the Hajj and Umrah Law (2019). The data set is thoroughly analyzed for solutions, conclusions, and scientific explanations (Soekanto, 2006).

Discussions

1. Acts of Discrimination by Business Actors that Can Meet the Elements of Violation of Article 19 Letter d of the Competition Law (1999) in the Decisions of the KPPU in 2020.

Based on the description in the background, we outlined essential matters related to discrimination based on Article 19 letter d of the Competition Law (1999) (Pangestu, 2021). The alleged violation of discriminatory practices under Article 19 letter d of that Law contains the following elements such as 1) elements of business actors, 2) the element of conduct discrimination whether alone or jointly, 3) elements of other business actors, 4) the element performs one or more activities, 5) elements potentially resulting in monopolistic practices and unfair business competition, 6) elements of conducting discriminatory practices (Taufik 2023).

Article 19 (d) of the Competition Law (1999) is designed to ensure fair competition in the market. This specific clause prohibits business practices that prevent other businesses from entering or competing in a relevant market. In simpler terms, it means that companies are not allowed to engage in activities that create unfair barriers for new or existing businesses trying to operate in the same market. This clause can include practices like 1) exclusive dealing agreements, 2) predatory pricing, 3) creating barriers to entry through control of essential facilities

or resources, and 4) engaging in practices that limit the ability of other businesses to compete fairly (Hakim 2017; Wiganarto, Asenar, and Gultom 2021).

For example, a large company might use its power to create exclusive agreements with suppliers, making it difficult for new competitors to obtain the necessary resources to start their business (Sabirin & Tri Anggraini, 2024). Another example could be setting prices so low (predatory pricing) that new competitors cannot afford to compete, eventually driving them out of the market. By preventing these practices, Article 19 (d) aims to promote healthy competition, ensuring that all businesses have a fair chance to succeed and ultimately protecting consumers from the negative effects of monopolies, such as higher prices and reduced choices (Scheuerer, 2021).

To further comprehend these elements, it is crucial to analyze the specific activities that constitute discriminatory practices by business actors under Article 19 letter d of the Competition Law (1999). This action involves examining cases where business actors have either individually or collectively engaged in actions that unfairly disadvantage other competitors in the market. Such activities might include exclusive dealing arrangements, predatory pricing, or the establishment of barriers to entry that prevent new competitors from entering the market. The impact of these activities on market dynamics and competition must be assessed to determine if they lead to monopolistic practices or unfair competition. Furthermore, legal precedents and regulatory guidelines provide insights into how these elements are interpreted and enforced by authorities (Daskalova, 2019). This comprehensive analysis helps in understanding the practical application of Article 19 letter d and its implications for ensuring fair business practices.

In practice, the enforcement of Article 19 letter d involves scrutinizing the behavior of business actors to identify patterns of conduct that may constitute discrimination. Regulatory bodies and competition authorities play a critical role in investigating complaints, gathering evidence, and applying the law to specific situations. The objective is to create a competitive market environment where no single entity or group can abuse its market position to the detriment of competitors and consumers (Stylianou & Iacovides, 2022). By addressing and mitigating discriminatory practices, the law seeks to promote a level playing field, fostering innovation, efficiency, and consumer welfare in the market. Therefore, the authors try to summarise the six elements in 3 decisions from KPPU, namely Decision of KPPU Case Number 06/KPPU-L/2020, Decision of KPPU Case Number 07/KPPU-I/2020, Decision of KPPU Case Number 08/KPPU-I/2020 (Alma Syafitri and Sharda Abrianti 2022).

Table 1. Elements of Violation of Article 19 letter d of the Competition Law (1999)

Elements of Violation of Article 19 letter d	Decision of KPPU Case Number 06/KPPU-L/2020	Decision of KPPU Case Number 07/KPPU-I/2020	Decision of KPPU Case Number 08/KPPU-I/2020
Elements of Business Actors	PT Garuda Indonesia (Persero)	PT Lion Mentari; PT Batik Air Indonesia; PT Wings Abadi; PT Lion Express.	PT Telekomunikasi Indonesia (Persero) Tbk; PT Telekomunikasi Seluler
The element of doing either on its own or together	Conducting discriminatory practices on its own, in this case, is only done by the Reported Party I.	Conducting discriminatory practices jointly or in coordinated behavior with other business actors.	Conducting discriminatory practices jointly in this case or carried out in coordination (coordinate behavior) with other business actors.
Elements of other business actors	Discrimination is carried out on its own by the Reported Business Actor. Therefore, the elements of other business actors do not need to be proven.	Discriminatory practices are carried out with other business actors. The Reported Party IV is domiciled as a Door to Door Document Delivery Service Company, while the Reported Party I, Reported Party II, and Reported Party III are domiciled as scheduled commercial air transportation business actors who provide freight transportation services from certain airports to destination airports (port to port).	Both the Reported Party II, which is domiciled as a business actor in the field of providing mobile telecommunication facilities and services throughout Indonesia and across countries using the Global System for Mobile Telecommunication (GSM), and the Reported Party I, which is domiciled as a business actor providing telecommunication and informatics networks and services, as well as optimizing resources to provide high-quality goods and services, are included in discriminatory practices. In this case, the relevant market the Reported Parties owns is different. Thus, the elements of other business actors do not need to be proven.
The element performs one or more activities	The reported business actor carried out one activity: issuing an air transportation business policy	The Reported business actor conducts one activity: a Cooperation Agreement aimed at	The Reported business actors carried out one activity: the Reported Persons took action in the form of blocking internet access services for Netflix Subscription Video on

	related to the wholesaler program for Umrah tickets owned by the reported party and creating discriminatory practices against at least 301 (three hundred and one) other PPIUs.	convincing importers who are consumers of the Reported IV to provide certainty that all booking space of the Reported IV can be accepted in the cargo transportation services of the Reported I and Reported II.	Demand (SVOD) services on both fixed and mobile telecommunications service networks.
Elements that may result in monopolistic practices and or unfair business competition.	The discriminatory behavior of the Reported Party prevents other potential business actors from entering (barrier to entry) the same relevant market, namely, becoming a wholesaler of the Reported Party.	The discriminatory behavior carried out by the Reported Parties caused the closed access of PJT other than Reported Party IV to obtain cargo delivery rations from Reported Party I, Reported Party II and Reported Party III.	The discriminatory behavior of the Reported Persons against Netflix made Netflix's services inaccessible to their consumers. However, since July 2020, Netflix services have been accessible to the consumers of the Reported Parties because Netflix has been able to fulfill the rules requested by the Reported Parties.
Elements of Discriminatory Practices	The Reported Party appointed 6 PPIUs to become wholesalers of its Umrah tickets without a transparent selection process for all similar potential business actors or the Reported Party's top 20 contributors.	The Reported Parties made an agreement to limit the cargo capacity owned by the Reported Party I and Reported Party II. The Reported Party III is only to be given to affiliated companies, namely the Reported Party IV.	The reported persons blocked access to Netflix services, so the consumers of the reported persons could not enjoy Netflix services.

Source: KPPU Decisions on Violations of Discriminatory Practices in 2020, data processed.

From the table above, there are similarities and differences in the way the Reported Persons engage in discriminatory practices. The similarity is that the Reported Party's behavior is causing entry barriers for other potential business actors to enter the relevant market. Furthermore, the difference is that in case decision number 06/KPPU-L/2020, PT Garuda Indonesia (Persero) discriminated

by not conducting a transparent selection to become a wholesaler, and the Reported Party only prioritized its wholesalers. One of the wholesalers was a subsidiary of a company affiliated with the Reported Party. As for case number 07/KPPU-I/2020, the Reported Persons discriminated by really only prioritizing their subsidiaries and causing closed access for PJT other than Lion Group to get cargo delivery rations from the Reported Persons. Likewise, the discrimination committed by the Reported Persons in case number 08/KPPU-I/2020 is blocking internet access services to Netflix, causing Netflix services to be inaccessible to consumers of the Reported Persons. Through these decisions, the KPPU illustrated the practical application of the six elements under Article 19 letter d, providing a clear framework for understanding how discriminatory practices are identified and addressed. These cases serve as precedents for future analyses and enforcement actions, ensuring that business practices remain fair and competitive.

2. Assessing the Impact of Discriminatory Practices on Competition by Using the Rule of Reason Approach in KPPU Decisions 2020.

The approach used by KPPU to prove violations of Article 19 (d) regarding discriminatory practices is the rule of reason approach (Susetyani, Muryanto, 2020). This approach examines the impact of discriminatory practices committed by the reported parties. To prove it, KPPU must examine 1) the alleged violations committed by the reported parties, 2) the determination of the relevant market, 3) the dominant position held by the reported parties, and 4) the impact of discriminatory practices (Sabirin, 2024). The 2020 KPPU Decision related to discriminatory practices will be elaborated based on this. A review of the three decisions shows the following:

a. Forms of Discriminatory Practices

Case Decision No. 06/KPPU-L/2020 shows that KPPU determined that there were alleged violations of discriminatory practices by the Reported related to the selection of strategic business partners (wholesalers) for the sale of Umrah tickets to and from Jeddah and Medina, which were carried out only unilaterally. Meanwhile, in Case Decision No. 07/KPPU-I/2020, KPPU determined an alleged violation related to discriminatory practices where the reported parties entered into a Cooperation Agreement for the Transportation of Goods/Cargo from Hang Nadim Airport to Soekarno-Hatta Airport, Halim Perdana Kusuma Airport, Juanda Airport and Kualanamu Airport (Pangestu, 2021). Meanwhile, Decision No. 08/KPPU-I/2020 shows that the alleged violation of discriminatory practices is by blocking the provision of internet access services through a fixed network (fixed broadband) by one of the Reported Parties (Rizki et al., 2023). They were

blocking the provision of internet access services through mobile broadband by the Second Reported Party for SVoD services owned by Netflix.

b. Establishment of the Relevant Market

A *relevant market* is a market in which business actors market similar goods, services, or products that are close substitutes for those offered in the relevant market. The relevant market has two (2) horizontal and vertical relationships. The relevant market in Case No. 06/KPPU-L/2020 is the air transport ticket services owned by the reported party for travel to and from Jeddah and Medina to perform Umrah throughout Indonesia through the wholesaler program. In this case, the relevant market has a vertical relationship between the reported party as one of the air transportation ticket suppliers and its wholesaler, a strategic business partner—the reported party grants exclusive rights to its wholesalers to sell the reported party's Umrah tickets.

The Relevant Market in Case No. 07/KPPU-I/2020 is the domestic scheduled commercial air transportation market (package and cargo) of the Reported Parties with the Hang Nadim Airport route to Soekarno-Hatta Airport, the route from Hang Nadim Airport to Halim Perdanakusuma Airport, the route from Hang Nadim Airport to Juanda Airport, and the route from Hang Nadim Airport to Kualanamu Airport. The relevant market, in this case, has a vertical relationship where the Reported Parties I, II, and III are airlines that have facilities to be able to deliver goods or cargo. At the same time, the Reported Party IV is a deposit service company that provides goods or cargo and uses the airlines of the Reported Parties I, II, and III to deliver the goods or cargo.

The relevant market in Case No. 08/KPPU-I/2020 is the market for internet access service providers through fixed and mobile broadband networks owned by the Reported Party for services *video on demand* (Sinaga, 2022), around Indonesia. In this case, the relevant market has a vertical relationship: The Reported Persons have internet access through telecommunication networks for video-on-demand services. At the same time, Netflix is a video-on-demand service provider.

c. Dominant Position of the Perpetrators of Discriminatory Practices.

The dominant position held by the perpetrators is one of the elements that must be proven in Article 19 Letter d The Prohibition the Competition Law (1999) (Husdanah et al. 2021; Taufik 2023). There are two different limitations on the term dominant position, namely a dominant position in the broad

sense based on Article 1 number 4 and in the narrow sense according to Article 25 of the Competition Law (1999) (Sukarmi et al. 2021; Meiriska Dewi and Anisah 2022). If a company occupies a dominant position or has the highest position in the relevant market, it will be easier for it to commit acts of abuse of its dominant position (Fibrianti and Wahanisa 2023; Hartana 2020). It has several supporting facilities and can change the supply or demand for certain goods and services. Business actors with a dominant position can easily dictate the market and regulate conditions that are not by the market's will, so it is straightforward to abuse the dominant position in the market (Fuady, 1999).

In general, the company with the highest market share in the relevant market is the company that occupies a monopoly position, either naturally or regulated. Natural monopoly can be caused by the company owning essential facilities such as airports, ports, telecommunications or satellites, electricity networks, and clean water (Wardhana 2018). As the company lies in the highest market position, the opportunity for business actors to carry out monopolistic practices is very open (Kagramanto & Hilda, 2008).

In Case Decision No. 06/KPPU-L/2020, 4 (four) airlines provide direct flight services from Indonesia to Jeddah and Medina. The airlines are Lion Air, Saudi Arabia Airlines, and Citilink Indonesia; thus, the Reported Parties have the ability to monopolize the relevant market. In addition, the Reported Persons have a very strategic position because they have higher demand power than their competitors (Sabirin and Herfian 2021).

In Case Number 07/KPPU-I/2020, the Reported Parties are not in the highest position in the relevant market because the Reported Parties only control 44%, while other business actors, namely the Garuda group as competing business actors, control 54% of the relevant market. Therefore, the Reported Persons do not have the ability to carry out monopolistic practices in the relevant market, and they do not have a strategic position compared to their competitors. This condition is in line with Deswin's explanation, that in this case, if the Reported Persons do not control market share significantly, then consumers will switch to other cargo shipping airlines. This condition is proven by the number of consumers who have switched to other cargo shipping airlines, especially Garuda Group airlines. Therefore, it can be said that, in this case, ineffective discriminatory practices can lead to unfair business competition.

In Case No. 08/KPPU-I/2020, the market share of the reported parties is in a dominant position and even tends to monopolize the relevant market.

Reported Party I, PT Telekomunikasi Indonesia (Persero) Tbk, has a market share of more than 80% in fixed broadband compared to its competitors' products. Meanwhile, PT Telekomunikasi Seluler (Telkomsel), as the Second Reported Party, also has a market share of more than 80% in mobile broadband. With their dominant position, the reported parties have a more favorable position than their competitors' products because, in the demand market, the reported parties' products have a much higher level of demand compared to their competitors' products.

d. Impact of Discriminatory Practices on Competition

In this case, using the rule of reason approach, KPPU assesses the impact on business competition and consumers. This approach assesses the motives and consequences arising from the actions of business actors. Discriminatory practices are not prohibited in business competition, but they are prohibited if they generate unfair business competition in the relevant market.

The impacts caused by the discriminatory practices carried out by the Reported Party in Case No. 06/KPPU-L/2020 are:

- 1) There is one/group of business actors who can impose their will on the relevant market. There are at least 307 Umrah Pilgrimage Organizers (PPIU) in Indonesia. However, due to the wholesaler program carried out by the Reported Party, the market for Umrah travel only focuses on the six PPIUs chosen by the Reported Party. Therefore, the other 301 PPIUs cannot access bookkeeping and purchase the Reported tickets for Umrah directly at the sales office, counter, or branch of the Reported but can only go through the six PPIUs that have been appointed as wholesalers by the Reported.
- 2) Creating various barriers to competition in the relevant market. The lack of an open and transparent appointment process is not based on specific and measurable requirements and considerations, and inconsistency in the rationale for appointing wholesalers becomes the main reasons why barriers to competition in the relevant market exist.

The appointment made by the Reported Party to become a wholesaler is not carried out transparently and openly. This condition is because there are four wholesalers who have been appointed directly by the Reported Party. In comparison, the other 2 wholesalers must first apply a letter to become wholesalers to the Reported Party. Also, with the addition of the two wholesalers, the Reported

Party did not issue a different GA Info Revision as when there were previously additional wholesalers.

Likewise, the behavior of the Reported Party issued the Minutes of the Top Up Deposit Program Agreement to 2 of its wholesalers, In contrast, the other four wholesalers were not continued by the issuance of the Minutes of the Top Up Deposit Program Agreement. In addition, according to the author, the appointment of wholesalers by the Reported Party is not based on the requirements with consistent parameters because, among the six wholesalers, not all of them are top 20 contributors of the Reported Party, which is one of the prerequisites for becoming a wholesaler of the Reported Party.

Furthermore, the reported party explained that the prerequisite to becoming a wholesaler is not only to be a top 20 contributor of the reported party but also to have a slick sales performance record on the MEA route (Jedah-Madinah) with a high Umrah destination as well as on competing airlines. The inconsistency made by the Reported Party can be clearly seen in the appointment of this wholesaler, namely:

- a. Causing reduced business competition in the relevant market. In terms of the wholesaler appointment made by the Reported Party obtaining several benefits, including obtaining more competitive rates than 301 (three hundred and one) PPIUs that are not wholesalers of the Reported Party because the wholesalers have the right to be able to do bookkeeping or to purchase Umrah tickets belonging to the Reported Party in large parties and also the wholesalers have certainty of time and seats compared to 301 non-wholesalers. So, the PPIUs who become wholesalers of the reported get a much more favorable opportunity than other business actors, such as PPIU non-wholesalers. Thus, it results in unfair business competition in the relevant market.
- b. Causing reduced consumer choice. With the wholesaler program carried out by the Reported Party, consumers cannot purchase Umrah tickets directly on the Jeddah-Madinah route at the sales office, ticketing office, and branch office of the Reported Party because direct ticket sales have been closed, and ticket purchases can only be made through wholesalers. Thus, it reduced consumer choice in purchasing Umrah tickets for the Jeddah-Madinah route owned by the Reported party.

The impact of discriminatory practices that arise in Case No. 07/KPPU-I/2020 as a result of the actions taken by the Reported Persons are:

- a. Causing market barriers for air services. The cooperation agreement entered into by the Reported Parties, wherein the Reported Party IV has the exclusive right to use a cargo capacity of 40 (forty) tons per day for the agreed flight routes, namely from Hang Nadim Airport to Soekarno-Hatta Airport, Hang Nadim Airport to Halim Perdana Kusuma Airport, Hang Nadim Airport to Banda Juanda and Hang Nadim Airport to Kualanamu Airport. As a result of the cooperation agreement, there are barriers to access to the delivery of goods through flights owned by the Reported Party I, II, and III for PJT other than those of the Reported Party IV because most of the capacity of shipping goods and cargo from flights owned by the Reported Party I, II, and III is prioritized to the Reported Party IV. Furthermore, other PJTs get the capacity to deliver goods and cargo from the Reporters if there is a remaining capacity that has been used by the Reporters. Thus, the existence of such behavior causes entry barriers in the relevant market.
- b. Causing consumer harm. The delivery of goods from Hang Nadim Airport has consistently increased, but the number of transportation that can transport the goods is not balanced with the number of goods to be sent. This imbalance is due, among other things, to the cooperation agreement entered into by the Reported Parties, causing limited opportunities for PJT other than Reported Party IV that can be carried by Reported Parties I and II on the Hang Nadim Airport to Soekarno-Hatta Airport, Hang Nadim Airport to Halim Perdana Kusuma Airport, Hang Nadim Airport to Banda Juanda and Hang Nadim Airport to Kualanamu Airport, causing a buildup in the warehouse to wait for the queue of goods so that consumers have to wait longer for the delivery of their goods.

In Case No. 08/KPPU-I/2020, the discriminatory behavior of the Reported, that is, the blocking of Netflix, resulted in entry barriers for several merchants because the blocking resulted in subscription-based video-on-demand services (SVoD) (Riekkinen, 2018). Netflix cannot be marketed to the consumers of the Reported Persons and causes the loss of opportunity for the Reported Persons' consumers to be able to enjoy Netflix SVOD (Kumar et al., 2020). In this case, the blocking carried out by the Reported Parties did not cause unfair business competition because the actions were carried out by the Reported Parties to comply with applicable regulations such as the Electronic Information and Transactions Law (2008, amendments 2016 & 2024) and the Pornography Law (2008) (Yuliartini, Mangku, and Darayani 2022; Christiano 2020), and if the Reported Parties did not take the blocking action, they could discriminate against

other business actors with similar products that had complied with applicable regulations. The blocking of Netflix did not last long because the blocking was opened by the Reported Persons.

Telkom Group, or the Reported Parties, began limiting access to Netflix services on July 7, 2020. This act is under Menkominfo letter 59/LB000/TEL-00000000/2020 concerning the Netflix Service Access Opening Report. In this case, the Complainants and Netflix have reached an agreement in which Netflix is dedicated to enforcing its service policies (Fergus Putri and Paksi 2021; Putri 2020), including a faster and easier removal mechanism and customer complaint resolution to offer adequate and complete protection for customers and the general public. The reporting party unblocks Netflix's service because Netflix has improved parental controls (Sitanggang 2022), and is ready to implement the removal/takedown policy if there are customer complaints. This act is reinforced by the testimony of the witness from the Reported Party I, who explained that: "...then in July 2020, Netflix provided a letter of comfort, the contents of which couthe rules that we asked for and also they showed that the arrangements in terms of parental control had been improved so that customers, especially children, would not be exposed to pornographic content. Then about the takedown policy, so if, for example, there are complaints, Netflix is willing to takedown the content...".

With the opening of service access to Netflix by the Reported Persons, since July 07, 2020, the consumers of the Reported Persons have been able to access Netflix using the products owned by the Reported Persons. Based on the explanation that has been described, the author makes a table that aims to summarize the contents of the analysis of the first problem formulation and make it easier to read, which contains the following:

Table 2: Application of the Rule of Reason Approach to Discriminatory Practices

Elaboration of the Rule of Reason Approach	Decision of KPPU Case Number 06/KPPU-L/2020	Decision of KPPU Case Number 07/KPPU-I/2020	Decision of KPPU Case Number 08/KPPU-I/2020
Forms of action Discriminatory practices	Article 19 letter d of the Competition Law (1999)	Article 19 letter d of the Competition Law (1999)	Article 19 letter d of the Competition Law (1999)
Relevant Market	The market for air transportation ticket sales services owned by the Reported Party with the	The market for domestic scheduled commercial air transportation services to transport goods (packages and	In Indonesia, there is a market for video-on-demand services through telecommunications networks (fixed

	destination to and/or from Jeddah and/or Medina with the aim of carrying out Umrah in all regions of Indonesia	cargo) of the Reported Party I, Reported Party II, and Reported Party III with Hang Nadim Airport Route to Soekarno-Hatta Airport (BTH-CGK), Hang Nadim Airport Route to Halim Perdanakusuma Airport (BTH-HLP), Hang Nadim Airport Route to Juanda Airport (BTH-SUB) and Hang Nadim Airport Route to Kualanamu Airport (BTH-KNO).	broadband and mobile broadband) owned by the Reported Persons.
Dominant Position	The Respondent has a dominant position and is likely to have a position to be able to carry out monopolistic practices in the relevant market.	The Reported Parties are not in the highest or dominant market control position, whereas competing business actors have higher market control than the Reported Parties.	The Reported Persons are in a dominant position in market control and even tend to monopolize the relevant market.
Impact	- by creating barriers to competition there; - by reducing business competition there - by reducing consumer choice there; and - by causing such effects.	-Causes market barriers for air services; -Causing consumer harm	-Causes barriers in the relevant market; -Causing consumer harm; -Causing the opening of Netflix access services by the Reported Parties; 3.

Source: KPPU Decisions on violations of Discriminatory Practices in 2020, data processed

The explanation in the table above shows that the three decisions are equally suspected of violating Article 19 letter d on discriminatory practices. Then, related to the relevant market, the three cases have different markets, and all three have vertical relationships with other business actors. In terms of market share, not all

reported business actors are in a dominant position because Lion Group does not have the highest market share in the relevant market. KPPU should be more careful in determining a case because if the business actor is not in the highest position of the market share or dominant, the discriminatory practices carried out will be ineffective, primarily when the investigation arises from KPPU's initiative. The rule of reason approach should not be applied in this case. It is different if the rule of reason is applied in the other two decisions where the reported parties have a dominant position and even tend to monopolize the relevant market. Furthermore, related to the impact caused by the discriminatory practice, it equally hinders potential business actors from entering the relevant market and causes harm to consumers. However, the difference is that in the case of blocking by Telkom Group against Netflix, it is because Netflix did not comply with applicable regulations. However, since July 2020, internet access services to Netflix owned by the Reported Persons have been opened because Netflix has made improvements and is willing to comply with applicable regulations owned by the Reported Persons.

Conclusion

The actions of business actors can fulfill the violation of Article 19 letter d of the Competition Law (1999) in the 2020 KPPU decision by engaging in discriminatory practices that create barriers to entry, leading to monopolistic practices and harming other business actors. This practice is highlighted in the research that reviews the accuracy of KPPU decision number 08/KPPU-I/2020 regarding violations of Article 19 letter D of the Competition Law (1999). The study indicates that discriminatory actions can result in negative impacts, such as creating barriers to entry, monopolistic practices, and harm to other business actors, ultimately causing material and immaterial losses to consumers. Case Decision of KPPU Case Number 06/KPPU-L/2020; The wholesaler appointment made by the Reported Party is not transparent and contains inconsistencies in the selection because there are three wholesalers appointed by the Reported Party that do not meet the qualifications, which is entering the Top 20 Garuda Contributors and causing other potential PPIUs unable to become the Reported Party's wholesaler. Case Decision Number 07/KPPU-I/2020 Lion Group as the Reported Persons took discriminatory action by making an agreement that prioritized the use of cargo belonging to the Reported airline used by its subsidiary to close the access of other PJT to be able to use the access of the Reported airline. Similarly, in Case No. 08/KPPU-I/2020, Telkom Group as the Reported Parties discriminated by blocking Netflix so that Netflix services could not be accessed using internet services owned by Telkom Group by consumers of the Reported Parties.

KPPU, in handling market control cases, including discriminatory practices, uses a rule of reason approach where a dominant position is the main requirement that encourages the success of business actors to be effective. In applying the rule of reason, KPPU must look at the alleged violation, the relevant market, the dominant position, and the impact caused by the discriminatory practice. Decision Number 07/KPPU-I/2020, Lion Group as the Reported Parties, is not in the highest market control, so the discriminatory practices carried out by the Reported Parties are not effective because consumers will tend to switch and choose competing business actors who are in the highest market control position. The application of the rule of reason cannot be applied effectively in this case because the business actors are not in the position of the highest market share. It is different in Case Decision Number 06/KPPU-L/2020 and Case Decision Number 08/KPPU-U/2020, where both are in a dominant position and even tend to monopolize the market so that the rule of reason approach can be used effectively in the case.

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