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Application of Supply Chain Strategy of Business Competition in Business Competition Commission Decision

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Abstract— This paper analyzes the application of norms concerning supply chain of business competition in commission for business competition decisions. The case study in this paper is in the case of supply chain of business competition conducted by PT Forisa Nusapersada in Case Decision Number 14/ KPPU-L/2015. As a comparison, this study also compares the application of SCM in cases that are almost similar, namely the Decision of the Case KPPU Number 14/KPPU-L / 2015 with the Decision of the Case KPPU Number: 06 / KPPU-L / 2004. Differentiation strategy and agile supply chain strategy had a significant impact on the firm performance under the low uncertainty. In conclusion, the companies are supposed to use environmental uncertainty as a determinant of the perceptions in setting their strategies.

Keywords— Business Competition, Supply chain strategy, Market Structure.

1. Introduction

Leading-edge companies now consider supply chain to be strategic – as a business enabler, as a revenue driver and as a differentiator. Many businesses now compete on the basis of their supply chain capabilities, as much as on their actual products. Indeed, because the supply chain encapsulates every single activity that enables getting products to customers, it touches the vast majority of functions within and across a company. World class organisations no longer perceive the supply chain as merely tactical support for business as usual, but take a holistic position that their supply chain is what drives the business. The latest strategic thinking is that ‘Supply Chain is The Business’. Problems in increasing national economic growth cannot be separated from the presence of monopolistic practices and biased business race. Therefore, it is necessary to have concrete actions so that fair market competition occurs and there is fair business competition,

therefore an effective and efficient national economic growth will be created. According to Thee Kian Wie, the existence of a competitive atmosphere is a condition for developing countries in encouraging economic growth including industrialization, then the existence of a competitive market companies will compete to attract more consumers by selling their products at the lowest possible prices, improving product quality and improve their service to consumers. The food and beverage industry market in Indonesia is very potential, with a large population, namely in 2014 reaching 252.164,800 inhabitants and projected in 2019 to reach 268,074,600 inhabitants is a potential market that can still be developed further. The packaged Beverage Food Industry at the end of 2015 is predicted to experience growth of 8-10%. The market for packaged beverage industry in 2015 is predicted to grow at 11-12% [1].

The Beverage Industry in Indonesia markets its products in the form of Ready to Drink beverages and powder drinks. The large market potential in the Beverage Industry makes Business Actors in the industry compete to compete for the predicted market share to continue to increase. One of them is PT Forisa Nusapersada, who also wants the market share. The company which was founded in 1995 is one of the companies which has a focus on the production and marketing of various kinds of packaged drinks in the form of powder drinks [2].

On December 29, 2014 PT Forisa issued the Internal Office Memo No. 15 / IOM / MKT-DB / XII / 2014 with regard to the Pop Ice the Real Ice Blender Program. This memo was issued by Marketing and Sales Dept. PT Forisa Nusapersada and addressed to the Area Sales Promotion Manager (ASPM) and was copied to the Internal Office Sales Promotion Supervisor (ASPS) No. Office Area. 15 / IOM / MKT-DB / XII / 2014 issued with the aim to maintain the position of Pop Ice as a market leader and maintain Pop Ice seller loyalty both at the market level and at the beverage stall level, by issuing the Pop Ice program The Real Ice Blender. On the basis of the existence of the Pop Ice program, The Real Ice Blender, this then becomes problematic and causes unfair business competition.

In this paper, we will try to elaborate on cases related to supply chain of the Business Competition Law conducted by PT Forisa Nusapersada, by describing how to approach the business competition market structure and how legal compliance with supply chain of Article 19 letters (a) and (b) and Article 25 paragraph 1 letter (a) and (c) Law Number 5 of 1999, on Case Decision Number 14 / KPPU-L / 2015. This paper also tries to compare between cases of supply chain of business rivalry for the situation of PT Forisa Nusapersada with supply chain of business rivalry for the situation of PT Arta Boga Cemerlang (ABC) which were then analyzed in relation to the use of legal rules in the two KPPU decisions.

2. LITERATUR REVIEW

2.1. Case Position in Case Decision Number 14 / KPPU-L/2015

In the case of PT Forisa Nusapersada, which began when on December 29, 2014, the Reported Party issued an Internal Office Memo Number: 105 / IOM / MKT-DB / XII / 2014 regarding the Pop Ice the Real Blender Program. The issuance of the memo was motivated by the emergence of more and more new competitors in the same line of business and also due to market conditions, especially beverage outlets and kiosks that according to PT Forisa Nusapersada require serious attention from the brand, so with special and serious attention from the brand Pop Ice will stay awake. Besides the purpose of the publication of the memo is to maintain Pop Ice as the market leader [3, 4].

As a step to maintain the position as described above PT. Forisa Nusapersada through Internal Office Memo Number: 105 / IOM / MKT-DB / XII / 2014 made an activity called "Pop Ice the Real Ice Blender". These activities include the following: First, the Beverage Kiosk Exchange Assistance Program (BATU) assists the beverage kiosk by exchanging unsold S'Cafe products available at the beverage kiosk. Second, Beverage Kiosk Display Program: Perform display rental at beverage kiosks for 3 months. Prizes will be awarded per month with the following prize levels, Month 1: 1 Pop Chocolate Ice bales, Month 2: 2 Pop Ice T-shirts, Month 3: Phillips blenders. Third, the Market Shop Display Program, do the display rental in the market store for 3 months, do the display rental with 2 bales of Pop Ice Chocolate given in advance.

2.2. Legal Compliance with Supply chain of Article 19 Letters (a) and (b) and Article 25 Paragraph 1 letters (a) and (c) of Law Number 5 of 1999

In snaring the case experienced by PT Forisa Nusapersada, the Business Competition Supervisory Commission determined that two articles were violated, including Article 19 letters

a and b and Article 25 paragraph (1) letters a and c of Law Number 5 of 1999. Article 19 letters a and b "Business actors are prohibited from carrying out one or several activities, both alone and with other business actors, which may result in monopolistic practices and or unfair business competition in the form of: a. refuse and or hinder certain business actors from conducting the same business activities in the relevant market; or b. prevent consumers or customers of competitors from doing business relations with those competitors' businesses." In this article, it is regulated regarding the prohibition of business actors in carrying out their business to carry out activities that cause monopoly and unfair business competition, which based on Article 19 letters a and b, the elements are as follows [5, 6]:

To begin with, the component of business on-screen character, in light of the arrangements of Article 1 number 5 of Law Number 5 of 1999, what is implied by business on-screen character is each individual or business substance, regardless of whether consolidated or not a lawful element set up and domiciled or doing exercises inside the region the law of the Republic of Indonesia, both exclusively and together through understandings, directing business exercises in the financial field. PT Forisa Nusapersada has fulfilled the elements of being a legal business entity.

Second, the element of carrying out one or numerous actions, both alone and with other business performers, this element is seen from the activities or programs carried out by PT Forisa Nusapersada independently (alone) issuing Internal Office Memo No. 15 / IOM / MKT-DB / XII / 2014 concerning the POP ICE Program The Real ICE Blender and implemented with the issuance of the POP ICE Display Contract Agreement. Third, it causes monopolistic practices and unfair business competition. This third element can be found in I Internal Office Memo No. 15 / IOM / MKT-DB / XII / 2014 which requires traders to be willing to display POP ICE products exclusively according to agreed targets, and not sell competing products like POP ICE (S'Cafe, Camelo, MilkJuss and others) and promising prizes for traders, then there are also terms and conditions that must be obeyed if market stores, market outlets and beverage kiosks want to join the program. At the implementation stage, POP ICE Display Contract Agreement has also been made. On the basis of the above it is clear that the activities carried out by PT Forisa Nusapersada have caused unfair business competition [7].

Fourth, the element of activity carried out contained elements of rejection and / or obstruction of business actors. Based on the explanation of Article 19 letter a that Refusing or obstructing certain business entertainers may not be finished in an unnatural manner or with non-economic aims, for instance due to differences in ethnicity, competition and common position. This element can be seen and found in the

Pop Ice program The Real Ice Blender where in the program there is a ban on selling kiosks other than Pop Ice. The activities carried out by PT Forisa Nusapersada by binding the stores that follow the program on condition that they may not sell and may not display competitors' products, cause S' Cafe products (PT Karniel Pacific Indonesia) and MilkJuss (PT Karnunia Alam Segar) are not available at the store (availability product), this has

caused sales figures from S 'Cafe (PT Karniel Pacific Indonesia) and MilkJuss (PT Karnunia Alam Segar) products to decrease dramatically. This can be seen in the graph as follows:

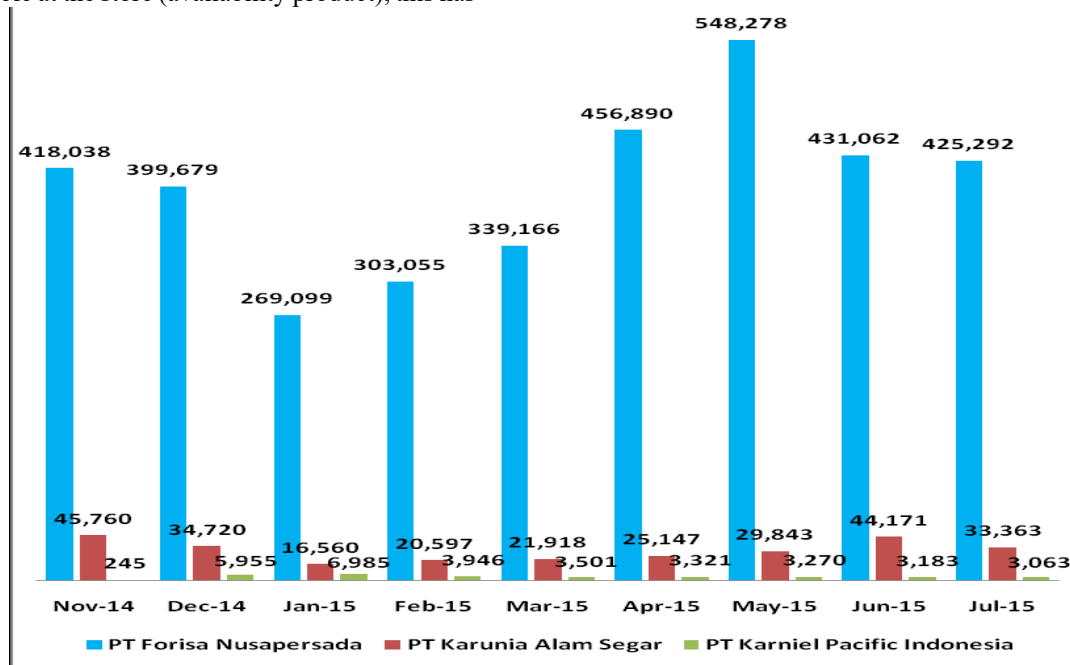


Figure 1. Sales Data Development Volume November 2014-July 2015

The graph above shows that the development of sales volume can be concluded, that PT Forisa Nusapersada has a dominant market share of 90.09% (ninety point nine percent) up to 94.30% (ninety four point thirty percent) in the period from November 2014 to July 2015. Rejection and or blocking certain business on-screen characters carried out in the same business activity conditions in the related fair. This means that a business actor can be said to have carried out a monopolistic act and caused an unfair business competition if the business actor who runs a business whose business product type or business type is the same as the business type of another person undertakes or makes an activity whose purpose is to obstruct or refuse other business actors in conducting business, marketing products or results of operations [8].

3. FINDING

3.1. Market structure approach in Trade Race.

In the development of the economic sector in Indonesia, of course it is inseparable from various problems. Monopolistic practices and unfair business competition have been proven to cause a real economic slowdown in Indonesia, accordingly there is a requirement for guidelines that explicitly

direct the disallowance of monopolistic practices and out of line business rivalry. With the establishment of good regulations on business competition, fair business competition will be created (unfair competition) and unfair competition. Hikmahanto Juwana explained that the birth of the Anti-Monopoly Law and unfair business competition had long been considered by experts, political parties, nongovernmental organizations, and government agencies. This can be seen when in 1995 the Indonesian Democratic Party issued an idea of the draft Bill on Anti-Monopoly. However, these ideas and proposals have not received a positive response, because there is no commitment and political will from the ruling political elite to regulate business competition issues [9].

Law was born as a means to regulate people's lives with all its aspects including in the business world. Due to various encouragement from various parties to make regulations on antitrust, in 1999 the Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition was born. The enactment of this Act became an important instrument in encouraging the creation of economic efficiency and creating a climate of equal business opportunity for all business actors, thus the existence of the Act should be encouraged in order to create Law as a Tool for Encouraging Economic Efficiency. In

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addition to creating Law as a Tool to Encourage Economic Efficiency, another purpose of the birth of this Act was to cut down monopolistic practices and unfair business competition that had been rampant in Indonesia, especially in the era of the New Order government. During the New Order era, many government policies were born which often benefited certain business actors [10].

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The establishment of Law No. 5/1999 has four objectives to be achieved, among others, First, maintaining public interests and increasing national economic efficiency as an effort to advance people's safety, Second, creating a beneficial business environment through the regulation of fair business competition so as to guarantee the existence of the same business certainty for large business actors, medium business actors, and private company on-screen characters, Third, forestalling monopolistic practices and additionally unreasonable business rivalry brought about by business entertainers, Fourthly, the making of adequacy and proficiency in business exercises. With the birth of Law No. 5 of 1999 is also expected to be able to be a solution to the problem of unfair business competition that has been rife in Indonesia. According to Hikmahanto Juwana, the regulation on the subject of the prevention of monopoly and uncalled for business rivalry is needed to ensure that freedom of competition in the economy can take place without obstacles, because business competition which is carried out negatively will result in [11]:

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Death or reduced competition between business actors.

The rise of monopolistic practices where the market is controlled uniquely by the business on-screen character.

The tendency of business actors to exploit consumers by selling expensive goods without adequate quality.

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Law Number 5 of 1999 aims to maintain the standard of law and give equivalent security to each business on-screen character, in order to give legitimate assurance to additionally quicken financial development with an end goal to improve general government assistance, just as the execution of the soul and soul of the 1945 Constitution. In compiling and enforcing competition policies, the aim is to maintain a balance between the fulfillment of the principle of justice and the principle of propriety. The principle of fairness and propriety is one of the principles that should be upheld in the formation of regulations and in implementation. In addition to the above objectives, the approach used in forming Law no. 5 of 1999 is with the market approach and behavioral approach, these two approaches are used to determine whether there has been a violation of business competition or not. First, Market Structure, if the company has a market

share of more than the indicators stipulated by the Act, which is 50% for 1 business actor or 75% for 2 or more business actors or as stipulated in Article monopoly. Second, Behavior, which is through an agreement made by the business actor with a competing business actor or not, for example the act of selling and selling (Predatory Pricing) and boycotts [12].

To see the application of the above approach, there are differences and obstacles that are absolute and not an important determinant because the principle determines the concepts of Rule of Reason and Per Se Illegal. Therefore this is not merely seen from the market structure. Therefore Law No. 5 of 1999 focused on the second approach. This is also used as the basis for KPPU to make a decision. First, the Rule of Reason is an act that is alleged to have violated competition law, the fact-finding must consider the circumstances surrounding the case to determine whether the act restricts competition improperly, so that it is prescribed that the examining authority can show anticompetitive consequences, or real losses due to competition. Not by showing whether the act was unjust or against the law. In approaching the Rule of Reason to determine structural markets, it must first be known definitions related to markets. Market (Market), that according to Stephen. F Ross as quoted by Susanti Adi Nugroho said "Market definition is the process of identifying those sellers who are in the position to keep their prices down, expand their output, and maintain their quality of their production so as to prevent the defendant from successfully raising its price, lowering its output, or reducing the quality of their product".

The market has two main components namely the product component and geographical component, the product component describes the goods or services being traded while the geographical market describes the location of the producer or seller of the product, the geographical market can also be interpreted according to the buyer's perspective regarding the availability of substitute products made or sold in various locations. Geographical market boundaries in practice are often determined by factors of transportation, duration of transportation, tariffs and regulations. Geographical markets do not have to be the same as the applicable political or administrative boundaries, unless the situation, tariffs, regulations or other external constraints have been determined. If a hypothetical monopolist raises the price of the product by a small but significant amount for a sustained period of non-transition, it is obvious from the reaction of numerous buyers whether to switch to other products, so that the increase in price is not beneficial for the monopolist of the hypothesis. If a substitute product is available, then the substitute product is included in the product market. If the substitute product is found in other markets but is not affordable by consumers, then the geographical market is expanded to other markets [13].

Second, Per Se Illegal, the word "per se" comes from

the Latin meaning "by itself, in itself, taken alone, by the meaning of itself, through itself, inherently, in isolation, unconnected, with other matters, simply as such, in its own nature, without reference to its relation. This principle is also known as "Per Se Doctrine". Per Se illegal in competition law means that certain types of agreements (for example: horizontal price fixing) or certain actions are considered inherently anti-compound and detrimental to the community without the need to prove that the act has actually damaged competition effort. Regarding this matter, Susanti Adi Nugroho believes that if an activity is clearly intended and has a destructive effect, it does not need to be questioned whether or not the same event (as the event being tried) to determine the event concerned is a violation of competition law.

3.2. Application of Normal Violation of Business Competition In Business Competition Commission Decision

In the KPPU's decision on the PT Forisa Nusapersada case, when compared with the KPPU's Decision on the case of PT Arta Boga Cemerlang (ABC) (ABC battery producer), it has almost the same case, but has differences in the application of norms. The article alleged to PT Arta Boga Cemerlang (ABC) has around 4 articles, while in the case of PT Forisa Nusapersada only 2 articles. In Case Decision Number: 06 / KPPU-L / 2004 Against PT Arta Boga Cemerlang (ABC) as the ABC battery producer, KPPU in addition to using Article 19 letter a, Article 25 paragraph (1) letter a. KPPU also uses Article 15 paragraph (3) and Article 25 paragraph (2) letter a. In this case the writer will only compare two articles that are not used in snaring the case of PT Forisa Nusapersada, namely Article 15 paragraph (3) and Article 25 paragraph (2) letter a.

First, Article 15 paragraph (3) "Business on-screen characters are restricted from settling on understandings in regards to specific costs or value limits on merchandise or potentially benefits, which contain necessities that business entertainers who get products and additionally benefits from providers of business on-screen characters: a. must be eager to purchase merchandise as well as different administrations from the provider business on-screen character; or b. won't purchase the equivalent or comparative merchandise and/or administrations from different business entertainers who are contenders with business providers". With regard to the alleged article, PT Arta Boga Cemerlang (ABC) is proven to have violated the article. In that case PT Arta Boga Cemerlang (ABC) was proven to make an agreement, namely if the wholesaler agreed on the Competitor Shift Program (PGK) agreement, then ABC would give a 2 percent discount. Plus, another 2 percent discount if the wholesaler is

committed not to sell Panasonic brand batteries (formerly National, red) produced by PT Panasonic Global Indonesia (PGI). If we look at the analysis above, in fact in the case of PT Forisa Nusapersada, KPPU can also use Article 15 paragraph (3). This is in line with the position of the case at PT Forisa Nusapersada that in the beverage kiosk product display agreement is required to add 2 Pop Ice variants from the Pop Ice variant that is already in the beverage kiosk, for example when the beverage kiosk has a 5 variant display, then they must next increase the display to 7 variants. Display verification will be conducted every week, if every week in 1 month, the beverage kiosk display is always committed to a number of variants and does not sell competitor products (S 'Cafe, Milkjus, Camelo, SooIce), then 1 month prize can be given, as well as with the next 2 months until the third month [14].

Second, Article 25 paragraph (2) letter a, "Business entertainers have a predominant situation as alluded to in section (1) if: a. one business on-screen character or a gathering of business on-screen characters controls half (50%) or a greater amount of the piece of the overall industry of a particular kind of products or administrations". In this case based on the KPPU Decision PT Arta Boga Cemerlang (ABC) was proven to violate the article. The KPPU Assembly chaired by M. Iqbal found a number of facts that ABC had made a number of PGK with wholesale and semi-wholesale stores selling batteries. PGK contains, among others, requests that ABC batteries plus other supporting promotional means be displayed on the relevant wholesale displays. The result was that PGK, which was run between March 2004 and June 2004, had resulted in a significant decrease in Panasonic battery sales. Until June 2004, the end of the PGK agreement, Panasonic's new battery sales rose and recovered, the assembly said. When compared with the case of PT Forisa Nusapersada, the authors assume that the KPPU can also use Article 25 paragraph (2) letter a, this is due to the fact that PT Forisa Nusapersada has a market share of more than 50%, ranging from 90.09% up to 94.30% in the period of November 2014. Actions prevent consumers or customers of competitors from doing business relations with competitors. The act of blocking consumers or customers from other business actors in establishing business relationships and in business activities is one form of action that causes unfair business competition, therefore Law No. 5 of 1999 prohibits these activities. Article 25 paragraph (1) letters a and c: "(1) Business actors are prohibited from using dominant positions both directly and indirectly for: a. Establish trade conditions with the aim of preventing and or preventing consumers from obtaining competing goods and or services, both in terms of price and quality; or c. Inhibiting other business actors who have the potential to become competitors to enter the relevant market. The above provisions regulate related to the dominant position of business actors which are

prohibited from making or stipulating trading conditions, which is intended to prevent and prevent customers and consumers from obtaining products from other business actors.

The dominant position at PT Forisa Nusapersada in this case can be proven from the Graph of Market Contribution of Milk Powder Drinking Period November 2014 to July 2015, PT Forisa Nusapersada has a dominant position by controlling a market share of 92% (ninety-two percent). Then the actions of PT Forisa Nusapersada which set trade conditions as contained in the Internal Office Memo No.15 / IOM / MKT-DB / XII / 2014 have been proven to prevent and or prevent consumers from obtaining competitive goods and or services, both in terms of price and [12].

4. CONCLUSIONS

This paper attempts to determine the impact of the supply chain strategies and the competitive strategies on the firm performance and if this changes according to the conditions of uncertainty. In light of the aftereffects of the conversation above, it tends to be presumed that, the use of business infringement standards on account of PT Forisa Nusapersada is suitable, the production of Internal Office Memo No.15/IOM/MKT-DB/XII/2014 is a solid proof that unreasonable business rivalry rehearses have happened. However, PT Forisa Nusapersada, which is proven to have a dominant position of more than 50%, should the Commission also apply Article 52 paragraph (2) letter a, in addition to the Commission also should apply Article 15 paragraph (3) as applied to the case of PT Arta Boga Cemerlang (ABC).

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