

**BUSINESS COMPETITION SUPERVISORY COMMISSION OF THE  
REPUBLIC OF INDONESIA**

**DECISION**

Number: 01/KPPU-L/2000

**FOR THE SAKE OF GOD THE ALMIGHTY**

The Business Competition Supervisory Commission hereinafter referred to as the Commission examining alleged violations of Law Number 5 Year 1999 concerning the Prohibition of Monopolistic and Unfair Business Competition Practices allegedly committed by:

PT. CALTEX PACIFIC INDONESIA, having its office address at Sarana Jaya Building, Jalan Budi Kemuliaan I No.1, Jakarta 10340, hereinafter referred to as the Reported Party;

Has made the following decision:

The Commission Council;

After having read the Report and documents in this case;

After having heard the statement of the parties concerned;

After having investigated the Reported Party's activities;

After having read the Minutes of Examination;

**IN VIEW OF THE CASE:**

1. Considering whereas a business enactor hereinafter referred to as Report Party I in his letter dated April 5, 2000 received by the Commission on June 30, 2000 stated the following:
  - a. Whereas in the period prior to the year 2000, with the aim of meeting its piping requirements for one year, the Reported Party had usually announced a tender open to vendors based on the TDR (Contractor's Registration Certificate) owned by them respectively. Such tender was for 1 x 1 year, namely usually referred to as Blanket Purchase Order (BPO) and such BPO itself consisted of several items (max. 8 items) divided into 2 (two) categories, namely:
    - Low grade (75% of the total requirement),
    - High grade (25% of the total requirement);
  - b. Whereas to date (in approximately the past 5 years) Reporting Party I as the Reported Party's Contractor, specifically for low grade requirements, has almost always been awarded the said tender, even though he only had facilities for low grade, compared to his competitors who had more complete facilities (low grade and high grade), it was still competitive;
  - c. Whereas the implementation of and competition in the tender mentioned in paragraph b hereinabove was considered rather fair by Reporting Party I because it was in compliance with the prevailing provisions and there was no requirement to offer all items requested by the Reported Party, but in accordance with the capabilities of the respective bidders, whatever they considered they were capable of offering. This was done by the

- Reported Party in recognition of the fact that the capabilities and facilities possessed by the respective bidders varied or were not the same;
- d. Whereas there were no limitations in respect of the pipes (country of origin), the most important thing being that these met international standards namely the American Petroleum Institute (API);
- e. Whereas in the order realization process Reporting Party I had never encountered any problems, either from the aspect of pricing, raw material origin or the process plant of Reporting Party I (on Batam Island), until the dispatch of the goods to the Reported Party's place/warehouse. No delays have ever occurred, delivery has been even faster than the determined schedule;
- f. Whereas for the period of the year 2000, Reporting Party I considered the implementation of the Reported Party's tender no longer fair with tendencies of fabrication, increasingly narrowing down the role of Reporting Party I and it could be deemed it had no more opportunities for the following reasons:
- 1) There were only 4 (four) bidders, namely:
    - PT. Purna Bina Nusa that did not have upsetting and heat treatment facilities, so that it could only offer low grade;
    - PT. Patraindo Nusa Pertiwi was equal to PT. Purna Bina Nusa,
    - PT. Citra Tubindo Tbk. had upsetting and heat treatment facilities so that it was able to offer low grade and high grade;

- PT. Seamless Pipe Indonesia Jaya was equal to PT. Citra Tubindo Tbk.;
- 2) The tender was awarded to one bidder only, namely the bidder offering all items (low grade and high grade);
- 3) All bidders were required to offer all items (low grade and high grade);
- 4) Bidders offering in accordance with their capability (low grade), even though their price was quite good and low but their offer was not complete with high grade because they did not receive support in the form of price and letter of support from the bidder possessing high grade, were going to be disqualified;
- 5) Those not possessing high grade facilities could request price and support from bidders possessing high grade facilities (whereas those possessing high grade facilities were the competitors of those not possessing high grade facilities, so that it would not make sense to have them compete with them);
- 6) Raw material supply sources were also limited and directed to particular sources;

Based on the above statements, Reporting Party I deemed as follows:

- 1) The Reported Party's planned tender allegedly violated the provisions of Law Number 5 Year 1999 concerning the Prohibition of Monopolistic and Unfair Business Practices,
- 2) The Reported Party's planned tender was not usual and was not fair for other participants/bidders,

- 3) The Reported Party's planned tender did not meet the criteria of principles of justice and equality. Reporting Party I deemed that there were unusual provisions and requirements in the plan compared to those applied previously tending to be oriented towards a particular supplier;
2. Considering that another business enactor hereinafter referred to as Reporting Party II in his letter dated September 13, 2000 received by the Commission on September 14, 2000, stated as follows:
- a. Whereas in the Reported Party's tender No.Q-034210-0000-0000-00-52 only manufacturers were invited and it showed a tendency to monopoly, in addition to that referred to as manufacturers were only thread makers (*pengulir*) and most strangely the awardee had been determined prior to the tender. The tender had not been announced in the mass media as stipulated in Pertamina's Decision Number 027/C0000/2000-SO dated April 15, 2000 and such tenders had been participated in by other oil contractor companies such as Conoco, Pertamina DEP Prabumulih, Maxus and others, and this was supported by BPPKA Pertamina;
- b. Whereas therefor the Reported Party held a meeting on August 3, 1999 in the Reported Party's Conference Room to discuss Business Partnering Casing & Tubing. Invited to and attended the meeting were the following:
- On the Reported Party's part Tatang Heramawan, Pandji Ariaz, Teuku A.S., Sic/Dea,
  - On the pipe processor's part PT. Citra Tubindo Tbk., PT. Hymindo Petromas Utama/Citra Tubindo Group, PT. Seamless Pipe Indonesia

Jaya/Bakrie Group, PT. Purna Bina Nusa, PT. Patrindo Nusa Pertiwi,  
PT. Pipa Mas Putih,

- On Pertamina's part Willem L.B. Siahaya – Head of Logistic Bureau of BPPKA,
- On Migas' part Moch.Poernomo Singgih,
- On the part of Development Control, Hananto;

c. Whereas the system and requirements proposed by the Reported Party in the tender concerned were as follows:

- One-package system even though there were 8 (eight) items consisting of low grade and high grade,
- Participants required to offer all items, if not, they would be disqualified;
- Only be 1 (one) vendor would be appointed as awardee for 3 (three) years;
- Bidders (vendors) not possessing heat treatment facilities had to ask the same from bidders who had heat treatment facilities;
- Heat treatment had to originate from in-country;

d. Whereas the meeting specified in sub-article b hereinabove was held several times in Batam, Anyer, Hotel Millenium Jakarta and at the Reported Party's Office in Jakarta attended by the same persons;

Based on the above, Reporting Party II is requesting the Commission to straighten out the tender requirements so that other contractors, too, can benefit from the same, not only a few of them;

3. Considering whereas in view of the written report of Reporting Party I and Reporting Party II mentioned above, on September 13, 2000 the Commission determined to conduct a Preliminary Examination, and for that purpose the Commission appointed an Examination Team consisting of Ir. H. Mohammad Iqbal as the Chairperson of the Team, Soy Martua Pardede, SE as Member, and Ir. H. Tadjuddin Noer Said as Member;
4. Considering whereas after having conducted a Preliminary Examination from September 13, 2000 through October 24, 2000 the Examination Team found allegations of violation that need to be further developed from the parties whose statements need to be heard, therefore the Examination Team recommended that the Commission conduct Follow-up Examination;
5. Considering whereas in view of such recommendation of the Examination Team, the Commission has decided to accept and conduct Follow-up Examination, and for such purpose it established the Commission Council consisting of Ir. H. Mohammad Iqbal as the Chairperson of the Commission Council, Soy Martua Pardede, SH as Member of the Commission Council and Ir. H. Tadjuddin Noer Said as Member of the Commission Council;
6. Considering whereas the Commission Council conducted Follow-up Examination from October 26, 2000 through January 23, 2001 and it was extended up to and including March 7, 2001;

7. Considering whereas in the Follow-up Examination the Commission Council reviewed 30 (thirty) documents obtained and requested from Reporting Party I as indicated in Attachment I to this Decision;
8. Considering whereas in the Follow-up Examination the Commission Council reviewed 11 (eleven) documents obtained from Reporting Party II as indicated in Attachment II to this Decision;
9. Considering whereas the Commission Council heard the statements of 22 (twenty-two) Witnesses, respectively as follows:
  - a. Nugroho I. Purbowinoto, in this matter acting for and on his own behalf in his capacity as the President Director of PT. Seamless Pipe Indonesia Jaya;
  - b. Drs. Frankie Setiadi, in this matter acting for and on behalf of the President Director of PT. Citra Tubindo, Tbk, furthermore verbally in the Examination Room and before the Commission Council Drs. Frankie Setiadi stated that Herman Hermanto and Frenandez da Silva who appeared jointly could make a statement for and on behalf of PT. Citra Tubindo Tbk.;
  - c. Yusuf Ginting and Hendra Kosasih, in this matter acting for and on behalf of the President Director of PT. Pipa Mas Putih;
  - d. Djurianto and Eryono, in this matter acting for and on behalf of the President Director of PT. Patraindo Nusa Pertiwi;

- e. Moch. Poernomo Singgih and Drs. Willem L.B. Siahaya, in this matter acting for and on his own behalf in his capacity as member of the Joint Committee of the Government-CPI;
- f. Ir. Lolita and Yosephne yap, in this matter respectively acting for and on their own behalf in their capacities as the Managing Director and the General Manager of PT. Penta Adi Samudera respectively;
- g. Sonny W/ Trisulo, in this matter acting for and on his own behalf in his capacity as the President Director of PT. Multi Guna Laksindo;
- h. Drs. Purnama, Msi, Aji Prayudi, SH, MM and Sudarso, in this matter acting for and on behalf of the President Director of Pertamina;
- i. Ir. Sarwi Notoatmodjo and Ir. Indradjit Kartowijono, in this matter acting for and on their own behalf respectively in their capacities as the Director of Oil and Gas Supporting Association and the President Director of PT. Energitama Bumi Nusa respectively;
- j. On the part of the Government, namely Dr. Ir. Rachmat Sudibyo, in this matter acting for and on his own behalf in his capacity as the Director General for Oil and Gas of the Department of Energy and Mineral Resources, Subiyanto and Edi Purnomo, in their respective capacities as staff members of the Directorate General of Oil and Gas, Department of Energy and Mineral Resources; and
- k. Witnesses whose identity has been kept a secret by the Commission Council;

10. Considering whereas the complete identity of the Witnesses and other parties examined and the complete statements of such parties have been recorded in the Minutes of the Examination;
11. Considering whereas in the course of this Follow-up Examination the Commission Council reviewed 2 (two) documents from Witness Djurianto and Eryono as indicated in Attachment III to this Decision;
12. Considering whereas in this Follow-up Examination, the Commission Council reviewed 3 (three) documents from Witness Moch. Poernomo Singgih and 4 (four) documents from Witness Willem L.B. Siahaya, as indicated in Attachment IV to this Decision respectively;
13. Considering whereas in the course of this Follow-up Examination the Commission Council reviewed 4 (four) documents from Witness Ir. Lolita and Yosephine Yap, as indicated in Attachment V to this Decision;
14. Considering whereas in this Follow-up Examination the Commission Council reviewed 7 (seven) documents from Witness Sonny W. Trisulo as indicated in Attachment VI to this Decision;
15. Considering whereas in this Follow-up Examination the Commission Council reviewed 4 (four) documents from Witnesses Drs. Purnama, Msi, Aji Prayudi, SH, MM and Sudarso, as indicated in Attachment VII to this Decision;

16. Considering whereas in this Follow-up Examination the Commission Council reviewed 3 (three) documents from Witnesses Ir. Sarwi Notoatmodjo and Ir. Indradjit Kartowijono, as indicated in Attachment VIII to this Decision;
17. Considering whereas in this Follow-up Examination the Commission Council reviewed 1 (one) document from the Government in this matter from the Directorate General of Oil and Gas, Department of Energy and Mineral Resources, as indicated in Attachment IX to this Decision;
18. Considering whereas the Commission Council heard the statement of the Reported Party represented by A.H. Batubara, the Vice President for General Affairs, Pandji A. Arias, Senior Coordinator Procurement Business Relations, Genades Panjaitan, Manager Corporate Affairs and A.B.M. Simanjuntak, Manager Strategic Procurement, in this matter acting for and on behalf of the President Director of PT. Caltex Pacific Indonesian by virtue of a special Power of Attorney from the President Director of PT. Caltex Pacific Indonesia Number 2574/JKT/2000 dated December 19, 2000;
19. Considering whereas the Commission Council reviewed 79 (seventy-nine) documents of the Reported Party as indicated in Attachment X to this Decision;
20. Considering whereas the Commission Council finally has sufficient data for making a Decision;

**CONCERNING THE LEGAL ASPECTS:**

1. Considering whereas according to Reporting Party I in his written statement and in the statement given in the hearing before the Commission Council as well as in the documents submitted to the Commission Council, he stated that the Reported Party had held a tender under Instruction for Bidders No.Q-034210-0000-0000-00-52 for casing and tubing, the requirements whereof caused unfair business competition for the following reasons:
  - a. The bidders in the tender were required to offer all items (low and high grade) in a package (document of Reporting Party I No.2 and Reported Party's document No.5);
  - b. Bidders possessing only low grade facilities were required to obtain letter of support from business enactors possessing high grade facilities in-country (document of Reporting Party I No.2 and Reported Party's document No.5);
  - c. Domestic business enactors possessing the above mentioned high grade facilities are competitors of business enactors possessing low grade facilities only;
  - d. The incompleteness of the letter of support as intended hereinabove would cause the disqualification of the bidder concerned (document of Reporting Party I No.2 and Reported Party's document No. 5);
  - e. The pipe (mill) source was limited and was oriented to certain sources;Whereas based on the matters specified by Reporting Party I, the Reported Party is alleged of having violated Article 22 of law Number 5

Year 1999 concerning the Prohibition of Monopolistic and Unfair Business Competition Practices;

2. Considering whereas according to Reporting Party II in his written statement and in the statement he made in the hearing before the Commission Council as well as the documents submitted to the Commission Council, he stated that the Reported Party's Tender No.Q-034210-0000-0000-00-52 had been held in an unfair business competition due to the following matters:
  - a. Tender implementation was not announced in the mass media;
  - b. The invitation for the meeting for the socialization of the introduction of this new tender system was only addressed to pipe processors, without involving agents and traders as in previous tenders (document of Reporting Party II No.1, 2 and 3);

Whereas based on the matters as specified by Reporting Party hereinabove, the Reported Party is alleged of having violated Article 22 of Law Number 5 Year 1999 concerning the Prohibition of Monopolistic and Unfair Business Competition Practices;

3. Considering whereas according to the Reported Party's statement before the Commission Council and the documents submitted to the Commission Council the Reported Party stated as follows:
  - a. Whereas the changes in the requirement of the tender implementation by the Reported Party were the business enactor's policy with the purpose of achieving overall efficiency in order to reduce inventory level, procurement cost and cycle time. For achieving the above-mentioned matters, partners

- possessing capability facilities and experience and management through consignment system. With this method, the Reported Party would be able to save US\$10 (ten) million per year (Reported Party's document No.1);
- b. Whereas in order to materialize the Reported Party's above mentioned intention, the Reported Party formed a Joint Committee of the Government-CPI, with its members consisting of elements from the Directorate General of Oil and Gas, Office of the Development Control Minister and Pertamina-BPPKA, who, according to the Reported Party, have the competence to approve the Reported Party's procurement plans (Reported Party's document No.1);
- c. Whereas the Reported Party furthermore held a series of socialization meetings in the context of introduction and request input for the design of the above mentioned new goods procurement system inviting 6 (six) pipe processors (Reported Party's document No.29);
- d. Whereas the result of the above mentioned socialization meeting process was the creation of the new goods procurement system, the implementation thereof remained in compliance with the provisions for the procurement of goods and services namely Presidential Decree Number 16 Year 1994, Decision of the Board of Directors of the State Oil and Gas Company (Pertamina) No. Kpts.108/C000/94-SO, and Pertamina-BPPKA Procedure Bulletin No.077 Rev.II and approved by the Joint Committee of the Government-CPI in the meeting held on December

16, 1999 and approved by Pertamina-BPPKA on December 21, 1999 (Reported Party's document No.36);

- e. Whereas prior to conducting the tender for the procurement of casing and tubing, the Reported Party had conducted manufacturer assessment of 8 (eight) potential contractors namely PT. Citra Tubindo Tbk., PT Penta Adi Samudera, PT. Semaless Pipe Indonesia Jaya, PT. Purna Bina Nusa Tbk., PT. Multi Guna Laksindo, PT. Bakrie Pipe Industries, PT. Patraindo Nusa Pertiwi and PT. Pipa Mas Putih (Reported documents No.2, 3 and 79);
- f. Whereas based on the 8 (eight) assessed business enactors, the Reported Party concluded that there were 3 (three) potential alternative partnerships, namely between the Reported Party and PT. Seamless Pipe Indonesia Jaya and PT. Bakri Pipe Industries, between the Reported Party and PT. Citra Tubindo Tbk. and between the Reported Party and PT. Purna Bina Nusa, PT. Penta Adi Samudera and PT. Multi Guna Laksindo. Meanwhile, PT. Pipa Mas Putih and PT. Patraindo Nusa Pertiwi were only suitable for supporting the above specified three alternative partnerships (Reported Party's document No.79);
- g. Whereas after the Reported Party had held a meeting with the Joint Committee of the Government-CPI, the Reported Party decided that only 4 (four) pipe processors, namely PT. Citra Tubindo Tbk., PT. Purna Bina Nusa, PT. Seamless Pipe Indonesia Jaya and PT. Patraindo Nusa Pertiwi

- would be invited to participate in the tender (Reported Party's document No.3);
- h. Whereas on March 2, 2000 Herman Hermanto of PT. Citra Tubindo Tbk. presented his proposal that a consortium be formed, so that the aforementioned procurement of casing and tubing would not have to be conducted through a tender, but the appointment of a consortium as the implementor of the above mentioned work would be sufficient, with PT. Citra Tubindo Tbk. acting as coordinator who would distribute the work among the consortium members. The Reported Party rejected such proposal and the Reported Party's rejection was approved by the Government;
  - i. Whereas furthermore the bid opening held on May 2, 2000 was attended by 4 (four) participants who had passed the manufacturer assessment (Reported Party's document No.4);
  - j. Whereas the Reported Party did not hesitate in applying the new requirements considering that this would enhance the utilization of domestic industry with high grade and low grade facilities at the same time which is a national policy and it has been stipulated under separate rules;
  - k. Whereas the Reported Party stated that the indication of mill source in the tender document was only a suggestion in consideration of quality and experience;
  - l. Whereas the Reported Party did not intend to direct a particular participant to win the tender, the most important matter for the Reported Party was

- that all criteria set forth by the Reported Party, including the requirement concerning letter of support for the domestic upsetter and heat treater could be met;
- m. Whereas the reason for using domestic pipe processors with heat treatment and upsetting was the Government's appeal for obtaining domestic industrial added value;
  - n. Whereas the Reported Party did not advertise in the mass media because the tender was conducted through direct selection in accordance with the provisions of Presidential Decree Number 16 Year 1994 concerning the Implementation of the State Revenues and Expenditures Budget;
4. Considering whereas in his statement before the Commission council, Witness Ir. Nugroho I. Purbowinoto stated as follows:
- a. Whereas in the implementation of the tender for the procurement of casing and tubing, the Reported Party invited only pipe manufacturers or processors;
  - b. Whereas it is correct that prior to the implementation of tender, socialization meetings had been held to discuss the tender applying the new requirements which were then approved by all those attending;
  - c. Whereas the tender awardee had never distributed work to the Witness;
5. Considering whereas in his statement to the Commission Council Witness Drs. Franke Setiadi and Witness Herman Hermanto stated as follows:

- a. Whereas invited to the socialization meeting were PT. Citra Tubindo Tbk., PT. Seamless Pipe Indonesia Jaya, PT. Purna Bina Nusa, PT. Patraindo Nusa Pertiwi, PT. Pipa Mas Putih and PT. Hymindo Petromas Utama;
- b. Whereas the purpose of the socialization meeting held by the Reported Party was to introduce the new system for the procurement of casing and tubing referred as consignment purchase, a system that had been applied before by YPF Maxus Southeast Sumtra BV.;
- c. Whereas the Witness was agreeable to the new requirements even though he realized that based on these new requirements there would be business enactors that would not be able to participate in the tender because the tender with this system was not for small-scale entrepreneurs, but indeed for large-scale and strong business enactors;
- d. Whereas in one of the socialization meetings, the Witness refused the effectuation of the tender using the new requirements because the Witness and PT. Seamless Pipe Indonesia Jaya were the only ones capable of meeting the requirements. Therefore, the Witness once proposed that the work not be conducted through a tender, but through the direct appointment of a consortium led by the Witness himself, that would subsequently distribute work to all participants. The Reported Party and the Government rejected the above proposal with the reason that it was contradictory to the existing new regulations;

- e. Whereas in the work contract with the Reported Party the opportunity to sub-contract the work to third parties was open, insofar as meeting API requirements;
- f. Considering whereas in his statement before the Commission Council Witness Yusuf Ginting and Witness Hendra Kosasih stated as follows:
  - a. Whereas the Witness admitted to have participated in the series of socialization meetings held by the Reported Party and the situation in such meetings was such that the Witness had to accept the new tender requirements proposed by the Reported Party;
  - b. Whereas the Witness stated that in the aforementioned meetings there was a concept proposed by the Reported Party and a concept proposed by PT. Purna Bina Nusa;
  - c. Whereas had the bid requirements in the aforementioned new tender not prescribed the obligation to bid in one unit or package combining low grade and high grade, it is not certain that PT. Citra Tubindo Tbk. would have been the most competitive;
- 7. Considering whereas in his statement before the Commission Council and in the documents submitted to the Commission Council, Witness Djurianto and Witness Eryono stated as follows:
  - a. Whereas the Witness admitted to have participated in a series of socialization meetings held by the Reported Party (documents of the Witness No. 1 and 2);

- b. Whereas the Reported Party did not use pipes requiring heat treatment (high grade), so the package system bid was not important, therefore bidding could have been conducted through separate bidding system for high grade and low grade.
  - c. Whereas the Witness had no problem with agents or traders being invited to participate in the tender;
  - d. Whereas the Witness together with other attendants of the socialization meeting, except for PT. Seamless Pipe Indonesia Jaya and PT. Citra Tubindo Tbk., rejected the new requirements set forth by the Reported Party;
  - e. Whereas the Witness chose the letter of support from PT. Citra Tubindo Tbk. because it is located in the vicinity of the Witness' factory in Batam;
8. Considering whereas in his statement before the Commission Council, Witness Moch. Poernomo Singgih and Witness Willem L.B. Siahaya, stated as follows respectively:
- a. Whereas both Witnesses attended the series of socialization meetings held by the Reported Party;
  - b. Whereas according to Witness Moch. Purnomo Singgih, he attended the series of socialization meetings to ensure the implementation of the Government's policy in using domestic products;
  - c. Whereas according to Witness Willem L.B. Siahaya the idea to implement procurement using a new system originated from

Pertamina, namely in the context of efficiency, cost reduction, competitiveness, utilization of domestic products and compliance with the regulations;

- d. Whereas according to Witness Willem L.B. Siahaya, the consideration for inviting only 6 (six) pipe processors originated from the Joint Committee of the Government-CPI after stock taking;
  - e. Whereas the package-system tender was to become the policy of all Production Sharing Contractors (PSC) as evident from the Decision of Pertamina's Board of Directors Number 077/C0000/2000-SO Year 2000;
  - f. Did not notice the direction of tender awardee from the beginning;
9. Considering whereas in his statement before the Commission Council and in the documents submitted to the Commission Council Witness Ir. Lolita and Witness Yosephine Yap stated as follows:
- a. Whereas the company managed by the Witness falls under the trader category;
  - b. Whereas the Witness was not invited and did not attend the socialization meetings held by the Reported Party;
  - c. Whereas the Witness was visited by the Reported Party for manufacturer's assessment related to mill source, financial capabilities and others (the Witness' documents No.2 and No.3);
  - d. Whereas the Witness did not receive and was not notified of the manufacturer's assessment results;

10. Considering whereas in his statement before the Commission Council, Witness Sonny W. Trisulo stated as follows:
- a. Whereas the Witness was invited to the series of socialization meetings, he however attended the same with the representative of PT. Purna Bina Nusa;
  - b. Whereas the Witness objected to the Reported Party's policy in accepting only particular mill source, while there were many others of good quality, as for example Tusal Pipe from Austria and US Steel from the United States;
  - c. Whereas the Witness stated he was not agreeable to the package-system tender requirement because it was evident there were only 2 (two) business enactors capable of meeting the same namely PT. Citra Tubindo Tbk. and PT. Seamless Pipe Indonesia Jaya;
  - d. Whereas the Witness stated that in the procurement of casing and tubing at Pertamina Prabumulih, tender participants were allowed to import pipes processed with heat treatment and upsetting from overseas provided these were cheaper by 15% as a preferential figure for domestic products;
11. Considering whereas in his statement before the Commission Council, Witness Purnama, Witness Aji Prayudi and Witness Sudarso stated as follows:
- a. Whereas the idea of procurement through the alliance system in Production Sharing Contractors (PSC) circles was initiated based on a

comparative study conducted by Willem L.B. Siahaya and several employees of the Reported Party at Chevron and Texaco in The United States, the result of which were subsequently reported to Pertamina. The idea was then discussed in the Logistics Communication Forum and within Pertamina itself. The idea was ultimately presented to the Office of the Development Control and the Directorate General of Oil and Gas. Since the idea was not in compliance with Presidential Decree Number 16 Year 1994, it was agreed that the said idea would be introduced in the new Presidential Decree concerning the procurement of goods and services, because at that time discussions were under way concerning the concept of the Presidential Decree that was later stipulated as Presidential Decree Number 18 Year 2000;

- b. Whereas the membership of Pertamina's representative in the so-called Joint Committee of the Government-CPI was not known to Pertamina's Board of Directors, likewise Willem L.B. Siahaya had not been officially appointed as member of the said Committee;
12. Considering whereas in his statement before the Commission Council, Witness Dr.Ir. Rachmat Sudiby, Witness Subiyanto and Witness Edi Purnomo stated as follows:
- a. Whereas the Directorate General of Oil and Gas stipulated that the import of threaded (*diulir*) casing and tubing was prohibited because there were five business enactors engaging in threading (*ulir*) deemed capable of doing it in-country;

- b. Whereas the consideration of cost reduction in PSC circles was already in the Government's program, following the example of the North Sea project known in Indonesia as KRIS (Cost Reduction Indonesia Style);
  - c. Whereas there are not yet manufacturers capable of manufacturing seamless pipes in Indonesia, therefore it should be started with threading, upsetting, then heat treatment, the Government's plan is that Indonesia must be capable of manufacturing casing and tubing domestically;
  - d. Whereas the purpose of the involvement of the Directorate General of Oil and Gas in the Joint Committee of the Government-CPI and in the socialization meetings held by the Reported Party was only to serve as a source of reference for ensuring that there was competition, that domestic products were prioritized and that there were no violations of the regulations;
  - e. Whereas the Letter of the Director General of Oil and Gas Entrepreneurship Guidance Number 005/936/DMB/1992 concerning the Utilization of Domestic Heat Treatment and Threading Facilities was only an appeal and not a requirement;
13. Considering whereas in his statement before the Commission Council, Reported Party I provided the following additional statement:
- a. Whereas PT. Purna Bina Nusa submitted 2 (two) requests for a letter of support to PT. Citra Tubindo Tbk. for the tender of the Reported

Party No.Q-034210-0000-0000-00-52, namely on April 12, 2000 and on April 26, 2000, which was not obtained up to May 1, 2000 (one day prior to bid submission and bid opening);

- b. Whereas Reporting Party I stated that on May 1, 2000 at ± 19:30 hours the team of PT. Purna Bina Nusa that was going to attend the bid opening on May 2, 2000 was invited by the team of PT. Citra Tubindo Tbk. to Hotel Aryaduta Pekanbaru to meet in a room rented by PT. Citra Tubindo Tbk. In the said meeting PT. Purna Bina Nusa was forced to open and show its bid documents to be examined by PT. Citra Tubindo Tbk. as a condition for obtaining a letter of support from PT. Citra Tubindo Tbk.;
  - c. Whereas Reporting Party I stated that the above mentioned meeting was also attended by Pahlevi, in his capacity as the representative of PT. Patraindo Nusa Pertiwi, who had also been asked to do the same thing as a condition for obtaining the letter of support of PT. Citra Tubindo Tbk.;
14. Considering whereas in his statement before the Commission Council, the Witness whose identity has been kept secret by the Commission Council, stated as follows:
- a. Whereas it is correct that a meeting was held in a room at the Hotel Aryaduta Pekanbaru on May 1, 2000 at about 19:30 hours West Indonesia Time, one day prior to the bid opening on May 2, 2000;

- b. Whereas it is correct that in the above mentioned meeting PT. Purna Bina Nusa was requested to show its bid price to PT. Citra Tubindo Tbk. as a condition for obtaining a letter of support from PT. Citra Tubindo Tbk. After the representative of PT. Citra Tubindo Tbk. had seen the above mentioned price, the above mentioned proposal was sealed in the presence of PT. Citra Tubindo Tbk. and it was submitted to the tender committee on the following day;
  - c. Whereas the Witness confirmed that the representative of PT. Patraindo Nusa Pertiwi, namely Pahlevi, was also in the room where the above mentioned meeting took place;
  - d. Whereas the Witness heard that PT. Citra Tubindo Tbk. promised it would give work to PT. Purna Bina Nusa if it was awarded the tender;
15. Considering whereas in their statement before the Commission Council, Expert Ir. Indradjit Kartowijono and Expert Ir. Sarwi Notoatmodjo were of the opinion that seen from the normative aspect, there were no indications of violation by the Reported Party, however, there was a need to study whether the aforementioned new requirements had gone through adequate and comprehensive socialization process to related business enactors;
16. Considering whereas based on the facts disclosed in the hearing, both in the testimony of Witnesses as well as in the documents submitted to the Commission Council, and the written responses by the Reported Party, the Commission Council established the following facts:

- a. Whereas the Reported Party is an Indonesian legal entity known by the name of PT. Caltex Pacific Indonesia, having its office address in Sarana Jaya Building, Jalan Budi Kemuliaan I No.1, Jakarta 10340;
- b. Whereas the Reported Party, for the procurement of casing and tubing for 3 (three) years setting the price annually, held tender No.Q-034210-0000-0000-00-52 for which bid opening was conducted on May 2, 2000 in Rumbai;
- c. Whereas in the above mentioned tender the Reported Party introduced a new requirements, namely a one-package bid system combining low grade and high grade;
- d. Whereas the Reported Party had been aware from the beginning that under the one-package system there would only be 2 (two) business enactors meeting such requirement, namely PT. Citra Tubindo Tbk. and PT. Seamless Pipe Indonesia Jaya;
- e. Whereas the Reported Party set the requirement for tender participants possessing only low grade facilities to enclose a letter of support from business enactors possessing high grade facilities;
- f. Whereas the Reported Party required that such letter of support come from domestic business enactors by virtue of the Government's appeal indicated in the Letter of the Director General of Oil and Gas Entrepreneurship Guidance, Directorate General of Oil and Gas, Department of Mines and Energy of the Republic of Indonesia Number

005/396/DMB/1992 dated January 4, 1992 concerning the Utilization of Heat Treatment and Threading Facilities in-country;

- g. Whereas for introducing the tender with such new requirements, the Reported Party held a series of socialization meetings, starting with Jakarta, Batam, Anyer and back in Jakarta inviting only 6 (six) pipe processor business enactors namely PT. Citra Tubindo Tbk., PT. Seamless Pipe Indonesia Jaya, PT. Purna Bina Nusa, PT. Patraindo Nusa Pertiwi, PT. Pipa Mas Putih and PT. Hymindo Petromas Utama;
- h. Whereas the Reported Party conducted manufacturer assessment activities from September 21-28, 1999 involving 8 (eight) business enactors, namely PT. Citra Tubindo Tbk., PT. Penta Adi Samudera, PT. Seamless Pipe Indonesia Jaya, PT. Purna Bina Nusa, PT. Multi Guna Laksindo, PT. Bakrie Pipe Industries, PT. Patraindo Nusa Pertiwi and PT. Pipa Mas Putih. Based on the result of the above mentioned manufacturer assessment, the Reported Party recommended 3 (three) alternative partnerships, namely partnership between the Reported Party and PT. Seamless Pipe Indonesia Jaya and PT. Bakrie Pipe Industries, between the Reported Party and PT. Citra Tubindo Tbk., between the Reported Party and PT. Purna Bina Nusa, Pt. Penta Adi Samudera and PT. Multi Guna Laksindo. Meanwhile, PT. Pipa Mas Putih and PT. Patraindo Nusa Pertiwi were only as supporters of the above mentioned three alternative partnerships;

- i. Whereas after the Reported Party had held a meeting with the Joint Committee of the Government-CPI, it was decided that only 4 (four) business enactors had been qualified, namely PT. Citra Tubindo Tbk., PT. Seamless Pipe Indonesia Jaya, PT. Purna Bina Nusa and PT. Patraindo Nusa Pertiwi, whereas the procurement system would be implemented through tender;
- j. Whereas PT. Citra Tubindo Tbk. proposed to form a consortium of pipe processors so that the aforementioned procurement of casing and tubing would not have to be conducted in the form of a tender, but it would be sufficient to appoint the consortium as the work implementor with PT. Citra Tubindo Tbk. acting as coordinator who would subsequently distribute work to consortium members. Such proposal was not approved by the Reported Party and the Government, so that the procurement of casing and tubing was conducted through a tender;
- k. Whereas out of the 4 (four) pipe processors invited to participate in the tender, only 2 (two) pipe processors were capable of meeting the requirements set by the Reported Party, whereas the 2 (two) pipe processors not possessing high grade facilities in accordance with the requirements were required to obtain a letter of support from business enactors possessing such facilities;
- l. Whereas the requirement for obtaining the letter of support has been a common practice. In the above mentioned tender, bidders were not allowed to request a letter of support from foreign business enactors as

a consequence of the Government's appeal included in the Letter of the Director General for Oil and Gas Entrepreneurship Guidance, Directorate General of Oil and Gas, Department of Mines and Energy of the Republic of Indonesia Number 005/396/DMB/1992 dated January 4, 1992 concerning the Utilization of Heat Treatment and Threading Facilities in-country, whereas there were only 2 (two) domestic business enactors capable of issuing such letter of support, namely PT. Citra Tubindo Tbk. and PT. Seamless Pipe Indonesia Jaya who were in fact competitors of the tender participants;

- m. Whereas PT. Purna Bina Nusa and PT. Patraindo Nusa Pertiwi requested a letter of support from PT. Citra Tubindo Tbk. considering that the location of PT. Citra Tubindo Tbk. in Batam was more economical compared to the location of PT. Seamless Pipe Indonesia Jaya in Cilegon, bearing in mind that the Reported Party's warehouse receiving goods is located in Dumai, the Province of Riau;
- n. Whereas the letter of support provided by PT. Citra Tubindo Tbk. to PT. Purna Bina Nusa and PT. Patraindo Nusa Pertiwi was provided on May 1, 2000 namely one day prior to the bid opening, at about 19:30 hours West Indonesia Time in a room at the Hotel Aryaduta Pekanbaru. The said letter of support was provided after PT. Citra Tubindo Tbk. had requested PT. Purna Bina Nusa and PT. Patraindo Nusa Pertiwi to show the bid price that would be submitted at bid opening on May 2, 2000 and PT. Purna Bina Nusa and PT. Patraindo

Nusa Pertiwi agreed to show the said bid price because they had been promised to receive work from PT. Citra Tubindo Tbk.;

- o. Whereas the bid opening held on May 2, 2000 was attended by 4 (four) participants namely PT. Citra Tubindo Tbk. with a bid price of US\$15,447,672, PT. Purna Bina Nusa with a bid price of US\$15,872,954, PT. Patraindo Nusa Pertiwi with a bid price of US\$15,966,092 and PT. Seamless Pipe Indonesia Jaya with a bid price of US\$16,103,020 so that PT. Citra Tubindo Tbk. was determined as the awardee with the lowest bid price;
17. Considering whereas based on the above mentioned facts, the Commission Council has concluded that in the implementation of tender No.Q-034210-0000-0000-00-52 held by the Reported Party with the bid opening held on May 2, 2000 in Rumbai, Pekanbaru, a collusion occurred among PT. Citra Tubindo Tbk. and PT. Purna Bina Nusa and PT. Patraindo Nusa Pertiwi, to arrange and or determine the tender awardee leading to unfair business competition. This is evident from the meeting in a room at the Hotel Aryaduta Pekanbaru on May 1, 2000 at about 19:30 hours West Indonesia Time for obtaining a letter of support for high grade facility. The Reported Party should have suspected from the beginning that the aforementioned collusion would occur, because the Reported Party had realized from the beginning that there would only be 2 (two) business enactors meeting the aforementioned requirements namely PT. Citra Tubindo Tbk. and PT. Seamless Pipe Indonesia Jaya so that such

unbalanced position was extremely sensitive to the occurrence of collusion. Therefore the Reporting Party is deemed not to have been exercised adequate prudence in ensuring fair business competition. Meanwhile the letter of appeal issued by the official of the Directorate General of Oil and Gas of the Department of Mines and Energy of the Republic of Indonesia Number 005/396/DMB/1992 dated January 4, 1992 by virtue of the Stipulation of the People's Consultative Assembly Number XX/MPRS/1966 and Number III/MPR/2000 concerning Legal Source and Hierarchy of Laws and Regulations does not fall under the hierarchy of legislation used as a basis for exemption as intended in Article 50 sub-article a of Law Number 5 Year 1999 concerning the Prohibition of Monopolistic and Unfair Business Competition Practices. For such purpose, the Commission Council suggests to the Government in relation to efforts for the utilization of domestic products to stipulate the same in a clear and certain provision and in compliance with Law Number 5 Year 1999;

18. Furthermore, the Commission Council has concluded that there has been a collusion among tender participants, namely PT. Citra Tubindo Tbk., PT. Purna Bina Nusa and PT. Patraindo Nusa Pertiwi, for the determination of tender awardee which is a violation of Article 22 of Law Number 5 Year 1999 concerning the Prohibition of Monopolistic And Unfair Business Competition Practices;

19. Considering whereas Article 22 of Law Number 5 Year 1999 concerning the Prohibition of Monopolistic and Unfair Business Competition Practices contains the following elements:

- a. Business enactor;
- b. Collusion;
- c. Arrange and or determine tender awardee;
- d. Occurrence of unfair business competition;

Ad.a. Business enactor;

- Considering whereas referred to as business enactor under Article 1 sub-article 5 of Law Number 5 Year 1999 concerning the Prohibition of Monopolistic and Unfair Business Competition Practices shall be defined as “Any individual or business entity, either incorporated as a legal entity or not incorporated as legal entity established and domiciled or engaging in activities in the jurisdiction of the state of the Republic of Indonesia, either jointly or severally through agreement, conducting various business activities in the field of economics”;
- Considering whereas based on the examination it has been found that PT. Citra Tubindo, Tbk., PT. Purna Bina Nusa and PT. Patraindo Nusa Pertiwi are business enactors in accordance with the above mentioned definition;
- Considering whereas based on the above mentioned considerations, the Commission Council is the opinion that the business enactor element has been met;

Ad. b. Collusion.

- Considering whereas referred to as collusion in Article 1 sub-article 8 of Law Number 5 Year 1999 concerning the Prohibition of Monopolistic and Unfair Business Competition Practices is defined as “Forms of cooperation conducted by business enactors with other business enactors with the intention of controlling the market concerned for the benefit of the business enactors involved in collusion”;
- Considering whereas based on the examination it was proven that there had been a meeting between PT. Citra Tubindo Tbk. and PT. Purna Bina Nusa, and PT. Patraindo Nusa Pertiwi at the Hotel Aryaduta Pekanbaru on May 1, 2000 at about 19:00 hours West Indonesia Time to arrange and or determine the tender awardee by showing to each other bid prices that were going to be submitted at the bid opening;
- Considering that based on the above mentioned considerations the Commission Council is of the opinion that the collusion element has been met;

Ad. c. Arrange and or determine tender awardee

- Considering whereas referred to as arranging and or determining tender awardee is an interaction process among tender participants who determine the tender awardee among themselves;
- Considering whereas there was an agreement to provide a letter of support to PT. Citra Tubindo Tbk. to PT. Purna Bina Nusa and PT. Patraindo Nusa Pertiwi under the condition that PT. Purna Bina Nusa and PT. Patraindo Nusa Pertiwi had to show first their respective bid

prices to PT. Citra Tubindo Tbk., so that PT. Citra Tubindo Tbk. could offer a lower price than PT. Purna Bina Nusa and PT. Patraindo Nusa Pertiwi whereas TP. Citra Tubindo Tbk. promised it would give work to PT. Purna Bina Nusa. It was further proven that the tender was awarded to PT. Citra Tubindo Tbk.;

- Considering whereas based on the above considerations the Commission Council is of the opinion that the elements of arranging and or determining the tender awardee have been met;

Ad.d. Occurrence of unfair business competition.

- Considering whereas referred to as unfair business in Article 1 sub-article 6 of Law Number 5 Year 1999 concerning Monopolistic and Unfair Business Competition Practices is defined as “Competition among business enactors engaging in production activities and or the marketing of goods and or services conducted in a dishonest or unlawful manner or in a manner hampering business competition”;
- Considering whereas based on the examination, PT. Citra Tubindo Tbk. offered its price after having seen the bid price of its competitors;
- Considering whereas based on the above considerations, the Commission Council is of the opinion that the element of unfair business practice element has been met;

17. Considering whereas based on the above considered facts, the Commission Council is of the opinion that the determination of the awardee of tender No.Q-034210-0000-0000-00-52 held by the Reported Party the bid opening

for which was held on May 2, 2000 in Rumbai, Pekanbaru was conducted through collusion among tender participants in violation of Article 22 of Law Number 5 Year 1999 concerning the Prohibition of Monopolistic and Unfair Business Competition Practices;

**HAS DECIDED TO:**

1. DECLARE THE PROCUREMENT OF CASING AND TUBING THROUGH TENDER NO.Q-034210-0000-0000-00-52 LEGALLY AND CONCLUSIVELY PROVEN TO HAVE VIOLATED ARTICLE 22 OF LAW NUMBER 5 YEAR 1999, BECAUSE THE TENDER AWARDEE WAS DETERMINED THROUGH COLLUSION AMONG TENDER PARTICIPANTS;
2. ORDER THE REPORTED PARTY NAMELY PT. CALTEX PACIFIC INDONESIA TO HALT CASING AND TUBING PROCUREMENT ACTIVITIES BASED ON TENDER NO.Q-034210-0000-0000-00-52 BY NO LATER THAN 30 (THIRTY) DAYS FROM THE TIME THE REPORTED PARTY RECEIVES A NOTIFICATION ON THE DECISION.

Hence this Decision has been made and read out before the court session open to the public on Friday, April 20, 2000 by me, Commission Member IR. H. Mohammad Iqbal acting as the Chairperson of the Commission Council and Soy Martua Pardede, SE and Ir. H. Tadjuddin Noer Said, respectively Members of the Commission Council, assisted by Ety Nurhayati, SH the Clerk of the Commission Council.

Chairperson of the  
Commission Committee,  
[signed]  
(IR. H.M. Iqbal)  
N.S.)

Member of the  
Commission Committee,  
[signed]  
(Soy M. Pardede, SE)

Member of the  
Commission Committee,  
[signed]  
(Ir. H. Tadjuddin

Clerk of the Council,  
[signed]  
(Etty Nurhayati, SH)