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Fakultas Hukum Universitas Airlangga, Jalan Dharmawangsa Dalam Selatan Surabaya, 60286 Indonesia, +6231-5023151/5023252

Fax +6231-5020454, E-mail: yuridika@fh.unair.ac.id

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Online Marketplace's Role and Legal Responsibilities on 'Official Stores' Restrictions To Implement Fair Competition Principle

Andyna Susiawati Achmad¹ and Astrid Athina Indradewi²

andyna.susiawati@gmail.com

^{1,2} Universitas Pelita Harapan, Surabaya, Indonesia

Abstract

In order to implement the idea of fair business competition, this article will analyze the function and legal obligations of online marketplaces in limiting commercial actors as 'official stores'. Normative juridical law research with statutory and conceptual techniques was used to create this study. According to the results, the distribution of commodities from producers to consumers has been altered by digital disruption. Currently, a number of online marketplace platforms offer 'official stores' services to a small group of business players so they can expand their enterprises exclusively. Applying 'official stores' terms and conditions to business actors is prohibited by both Law No. 5 of 1999, which prohibits unfair business competition, and Government Regulation 29 of 2021, which relates to the implementation of the trade sector. Distributors and agents of associated producers will face unfair economic rivalry as a result of producers entering the online market as 'official stores'. Producers are prohibited from selling their products in retail settings, whether offline or online, in accordance with the relevant legislation. The findings of this study should benefit the parties involved in the online marketplace by fostering fair commercial competitiveness.

Keywords: Goods Distribution; Online Marketplace; Business Competition; Trade; Producer.

Introduction

In this day and age, it is inevitable that digital technology will advance quickly. Technology has a significant impact on daily living. The spread of the internet network throughout several nations serves as a marker for this.¹ Internet penetration in Indonesia has achieved up to 78.19% (seventy-eight-point-nine percent), according to a poll conducted by the Association of Indonesian Internet

¹ Anak Agung Gde Bagus Udayana, 'Disrupsi Teknologi Digital: Tumbuh Kembangnya Industri Kreatif Berbasis Budaya', *Seminar Nasional Envisi* (2020).

Service Providers, or “Asosiasi Penyelenggara Jasa Internet” in 2023.² Out of a total population of 275,773,901 (two hundred seventy-five million seven hundred seventy-three thousand and nine hundred and one), the results were seen by 215,626,156 (two hundred and fifteen million six hundred twenty-six thousand one hundred and fifty-six) persons. Indonesia’s internet penetration rate improved by 1.17% (one point seventeen percent) when compared to the results from the previous period. Furthermore, Indonesian residents use the internet network via mobile devices and online activities reach approximately 37% (thirty-seven percent) in a week.³

There have been significant changes in people’s lives as a result of the widespread use of technology in this era of digital disruption, notably in terms of understanding and behavioral patterns. With the use of technology, tasks that were formerly completed in a conventional manner now produce patterns in digital systems. So in this instance, digital disruption offers a revolutionary innovation from the old and established system to a new system that is more effective and efficient. Wider market share opportunities are greatly increased by digital disruption in the trade sectors. This advancement undoubtedly gives business people new opportunities for managing their enterprises. By using a variety of platforms to market their items, companies can now advertise their goods for less money and shorten the marketing process.⁴ Even so, the existence of an online market has altered the paradigm of traditional trade, transforming the previously direct relationship between customers and business actors or organizations into a virtual, indirect one.

The ‘official store’ is one of the many features that online marketplace platform providers offer, and it has caught the attention of many sellers. Tokopedia, a provider of an online marketplace platform, offers this functionality to merchants or shop owners so that customers will view the establishment as more trustworthy. It hosts

² Asosiasi Penyelenggara Jasa Internet Indonesia, ‘Survei APJII Pengguna Internet di Indonesia Tembus 215 Juta Orang’ (2023) <<https://apjii.or.id/berita/d/survei-apjii-pengguna-internet-di-indonesia-tembus-215-juta-orang>> accessed 13 Maret 2023.

³ Saad Pamungkas, *Rahasia Cepat Kaya: Hanya Dari Modal Facebook, Whatsapp, dan Instagram* (4th edn, Quadrant 2019).

⁴ Caterin M Simamora, ‘E-Commerce’ (2017).

more than 4 (four) million online active merchants, serving 35 (thirty-five) million customers in 2018 alone.⁵ Future sales from the store will likewise rise throughout that time.⁶ According to information retrieved from Tokopedia's official website, the 'official shop' is a service offered to sellers on the internet with the goal of helping a limited group of merchants grow their businesses.⁷ For parties wishing to submit their businesses as 'official stores', which is designed for producers (principals) or official distributors of particular products, Tokopedia itself offers limits. On the other hand, Shopee has its own set of terms and conditions as a provider of an online marketplace platform. Shopee Mall is listed as a store that is designated just for brand owners and authorized distributors on Shopee's official website page.⁸ Similarly, Blibli, a provider of an online marketplace platform, offers an 'official store' function to merchants that have official approval from a brand or to stores that have a current firm establishment permit. The 'official store' is a location for stores and official brands as well as legitimate owners of brand license rights to sell their original products online, according to information collected from Blibli's official internet page.⁹

There is no denying that the availability of many online marketplace platform providers in this era of digital disruption has had an impact on how items are delivered from producers to consumers. Distribution, as defined in Article 1 Point (11) of Law Number 7 of 2014 concerning Trade, is the activity of distributing goods to customers directly or indirectly. Because the producer's products ensure that the form is usable when it gets into the hands of consumers at the appropriate time, this activity is crucial for the sustainability of economic activities.¹⁰

⁵ Nadine Freischlad, 'Tokopedia, Now 9 Years Old, Hits 4 Million Merchants' (2018).

⁶ Soffya Ranti, 'Apa Itu Official Store Tokopedia, Simak Syarat Ketentuan dan Cara Mendaftarnya' (2022) <<https://tekno.kompas.com/read/2022/06/04/15150047/apa-itu-official-store-tokopedia-simak-syarat-ketentuan-dan-cara-mendaftarnya-?page=all>> accessed 13 March 2023.

⁷ Tokopedia, 'Bagaimana Cara Menjadi Official Store?' (2023) <<https://www.tokopedia.com/help/article/bagaimana-cara-menjadi-official-store>> accessed 13 March 2023.

⁸ Shopee, 'Mengenai Shopee Mall' (2023).

⁹ Blibli, 'Mudahnya jadi Official Store, Daftar melalui Blibli Seller Center dan Blibli Seller App!' (2023) <<https://seller.blibli.com/learning/news/ART-00108/mudahnya-jadi-official-store-daftar-melalui-blibli-seller-center-dan-blibli-seller-app>> accessed 13 March 2023.

¹⁰ Sofjan Assauri, *Manajemen Pemasaran* (Rajawali Press 2013).

'Official retailers' in the online market are typically commercial actors who operate factories or production facilities. Producers are defined as business players who manufacture items in accordance with Article 1 number (11) of Government Regulation Number 29 of 2021 concerning the Implementation of the Trade Sector (hereinafter referred to as PP No. 29/2021). The producer, who occupies the first position in the distribution chain, produces commodities that are then dispersed by distributors, agents, and/or other members of the network. Because manufacturers engage in high-cost production activities, they unquestionably have stronger and larger capital than their distributors. Although the producer's position as a business actor on a wholesale scale is stronger, especially regarding competition in the sale of goods, even if there is a set upper or lower price limit on the retail selling price, producers compete directly with distributors and/or their agents in the online marketplace. Distributors and/or agents of linked producers will face unfair economic rivalry as a result of producers entering the web market as 'official stores'. For instance, producers engaging in unfair competition by setting excessively low selling prices would have an impact on connected distributors and/or agents.¹¹

The existence of a digital monopoly is one example of unfair business rivalry in digital business interactions.¹² Referring to the prohibition of producers, distributors, or wholesalers selling products to consumers at retail in Article 55, Paragraph 1, PP No. 29/2021. Furthermore, Article 166 PP No. 29/2021 emphasizes that business actors may be subject to a variety of administrative sanctions, either gradually or not gradually, if wholesalers violate these laws. As of right present, there is no law that particularly governs commercial rivalry in internet markets. Therefore, it is known that there is a conflict between the facts occurring in the field (*das sein*) and the applicable legislation (*das sollen*) based on the commodities

¹¹ Fatima, Nurul Siti and Absori, 'Perlindungan Hukum Terhadap Persaingan Usaha Tidak Sehat (Studi Hypermarket Giant Terhadap Marketplace)' (Skripsi thesis, Universitas Muhammadiyah Surakarta 2020).

¹² Komisi Pengawas Persaingan Usaha, "Peran KPPU dalam Sektor e-Commerce" (2018) <<https://www.kppu.go.id/id/blog/2018/10/peran-kppu-dalam-sektor-e-commerce/>> accessed 13 March 2023.

distribution route. To address the winner-take-all tendency of digital platform enterprises, competition rules need to be revised.¹³ The author is therefore interested in researching the “Online Marketplace’s Role and Legal Responsibilities on ‘Official Store’ Restrictions To Implement Fair Competition Principle”.

Goods Distribution Conventionally and Digitally

Trade is defined as “an arrangement of activities related to transactions of goods and/or services within the country and beyond national boundaries to transfer rights over goods and/or services to obtain compensation or compensation,” under Law Number 7 of 2014 respecting Trade. A process called trade involves the transfer of commodities and/or services from one area to another. The need and resource disparities between connected locations give rise to this activity. Other parties, like producers and consumers, play a part in the trading activity.¹⁴ The primary job of producers is to ensure that a product is distributed fairly, whereas the primary role of consumers is to ensure that they may conveniently get the products they use.

Trade transactions can be conducted using a variety of models, including Business to Business (also known as B2B), Business to Customers (often known as B2C), Customer to Customer (also known as C2C), and others.¹⁵ Because consumers frequently transact with other consumers as both buyers and sellers, the legal connection between business actors and consumers on the online marketplace platform can be categorized as part of the C2C model.

However, the digital disruption period has made it possible for B2B and B2C money to be made on online marketplace platforms. The B2B scheme enables business people or organizations to collaborate in order to build a solid reputation. In this manner, the business entity or organization will amass a large

¹³ Ron Chen, ‘Policy and Regulatory Issues with Digital Businesses’ (2019) World Bank Policy Research Working Paper.

¹⁴ Cholique Erricho Devic Perdana, ‘Analisis Prosedur Pengawasan Peredaran Barang dan Jasa Dinas Perindustrian dan Perdagangan DIY’ (Universitas Islam Indonesia 2018).

¹⁵ Kenneth C Laudon and Jane P Laudon, *Essential of Management Information System* (Prentice Hall, Inc 2003).

number of vendors or suppliers for their business. Through B2C, companies sell their products and services directly to consumers as producers and consumers assemble on a platform that enables better supply and demand matching with competitive price-quality options.¹⁶ The model is the same as a retail establishment that offers consumer goods. Sales operations will be more adaptable and dynamic in a marketplace.

A distribution route or channel of distribution is required to hasten or facilitate the flow of trade in goods or services from producers to consumers. Delivering goods and services from producers to consumers and users at the time and place of need is known as distribution. The utility of time, place, and the transfer of property rights are created by the distribution process.¹⁷ Channels of distribution may serve as a link between producers and consumers.¹⁸ The idea of distribution frequently evolves with the passing of time, moving from physical distribution management to supply chain management and finally logistics management.¹⁹ The actions taken by channel members to convey goods from producers to consumers serve as the distribution channel's role, but in practice they may result in variations in the flow of goods from principals to consumers.²⁰

Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition (hereinafter referred to as Law No. 5 of 1999) defines the meaning of a business actor as “any individual or business entity, whether in the form of a legal entity or not a legal entity established and domiciled or carry out activities within the jurisdiction of the Republic of Indonesia, both individually and jointly, through agreements, carry out various business activities in the economic

¹⁶ Chen (n 13).

¹⁷ Basri Effendi, ‘Pengawasan Dan Penegakan Hukum Terhadap Bisnis Digital (E-Commerce) Oleh Komisi Pengawas Persaingan Usaha (KPPU) Dalam Praktek Persaingan Usaha Tidak Sehat’ (2020) 4 Syiah Kuala Law Journal.[21].

¹⁸ Uci Wulan Sari, ‘Pelaksanaan Pendistribusian Liquefied Petroleum Gas (LPG) DI Desa Bahtera Makmur Kecamatan Bagan Sinembah Kabupaten Rokan Hilir’ (Universitas Islam Negeri Sultan Syarif Kasim Riau 2018).

¹⁹ Mikael, *Managing the Supply Chain: A Strategic Perspective* (Mamillan Press 1996).

²⁰ David Sukardi Kodrat, *Manajemen Distribusi (Old Distribution Channel and Postmo Distribution Channel Approach)* (Graha Ilmu 2009).

field.” Business actors can distribute items to customers in a variety of ways in this digitally disrupted era. To target certain market segments, business players use a variety of combinations of distribution channels. Depending on the distribution channel regulations each company has selected, the process of getting products to final consumers may take a long time or very little time.²¹

The rise of diverse company models and distribution methods has complicated and complicated commercial competitiveness. When evaluated from the standpoint of the industry, the business models share commonalities in the purchasing and selling of goods or services, but the approaches taken frequently differ. In this instance, it led to a change in the traditional distribution routes. In this age of digital disruption, many traditional distribution channels have been eliminated in order to save costs, according to business actors. The competition won't be adequately controlled if the expanding competition has an effect that makes it difficult for various business models to exist.

According to Article 1 point 6 of Law No. 5 of 1999, unfair business competition is “competition between business actors in carrying out production and or marketing activities of goods and or services that are carried out dishonestly or unlawfully or impede business competition”. One form of unfair business competition is monopoly activity, so every business actor is prohibited from controlling the production and marketing of goods or services which can result in monopolistic practices and or unfair business competition.²²

Online marketplaces, like those run by Amazon in the United States of America, have grown quickly in recent years. While the seller retains ownership of the commodity, these marketplaces act as an intermediary between buyers

²¹ Hesti Dwi Astuti dan Rizky Wulan Juliani, ‘Tinjauan Hukum Tentang Penataan Pendistribusian Gas Elpijij 3 Kg (Tiga Kilogram) Pada Pangkalan Gas Elpiji Di Kabupaten Cianjur’ (2018) 2 Jurnal Wawasan Yuridika.[44].

²² Betriks Eva Kalang, ‘Prosedur Penanganan Perkara Monopoli Dan Persaingan Curang Serta Snksi Hukum Terhadap Pelanggaran UU Nomor 5 Tahun 1999’ (2017) 6 Jurnal Hukum Lex Crimen.

and sellers.²³ Given the circumstances that exist across a number of online marketplace platform providers, producers acting as official stores in the online marketplace will put distributors and/or agents of linked manufacturers in an unfair competitive situation. A market that is skewed creates unfair business competition which is specified in Article 1 Number 6 of Law No. 5 of 1999. According to this article, the issue of unfair business competition that is conducted unjustly (fraudulently) and against the law or that impedes business competition is simultaneously controlled.

Simply put, there is unhealthy business competition in the relevant market when certain business actors engage in a way that prevents the development of healthy business competition. As a result, there are obstacles to (new) business actors entering the market as well as distortions in both the production and selling of goods. Business actors that manipulate the market have actual repercussions that rivals and new entrants experience firsthand.

In the supply chain, the producer's role functions as a producer of items that will later be disseminated by distributors and/or agents through its distribution network. Due to the significant expenditures associated with their production business activities, producers unquestionably have more capital than their distributors. Even though the producer's position as a business actor on a wholesale trade scale is stronger, producers compete directly with distributors and/or agents in the online market, especially when it comes to competition in the sale of goods, even though there is a set upper or lower price limit on the retail selling price. The practice of discount parties of significant price cuts applied by online marketplace providers like Tokopedia, Shopee, and Blibli led to a surge in buying and selling transactions. Due to the numerous huge discounts that can indicate selling at a loss (predatory pricing), this is what might occur in the online marketplace. Selling at a loss by business players with the intention of driving out rivals or competitors in the same market is known as predatory pricing. Selling items or services for significantly

²³ Jennifer K Ryan, Daewon Sun and Xuying Zhao, 'Competition and Coordination in Online Marketplaces' (2012) 21 *Production and Operations Management*. [997].

less than what it costs to produce them encourages customers to switch to their offerings, making it impossible for other business players to compete. Then, due to his dominance of the market, the business actor can decide at will what the selling price of his goods or services will be.²⁴

Monopolistic unfair business practices include discrimination, supplier or platform exploitation, exclusive contracts, predatory pricing, misuse of dominant position, and a variety of other unfair business practices.²⁵ Digital monopolies can prevent online marketplace platform providers from competing and innovating. A business entity license with a retail license may trade on the online market to foster fair business competition if it is connected to one of Indonesia's online marketplace platform providers.

Online Marketplace's Role and Legal Responsibilities on 'Official Store' Restrictions To Implement Fair Competition Principle

Online trading is a new and more contemporary phase of trade in the current era of digital disruption. The emergence of online marketplace platforms is just one of the many new online trading mechanisms. Platform providers appear to be vying with one another for control of Indonesia's internet trading market. Anyone can be a seller or a buyer in the same forum thanks to the existence of this online marketplace. The online marketplace platform offers a number of benefits to entice business actors to join the forum. The vast number of business actors that have joined the online marketplace system serves as evidence of this. Even business people with established brands and extensive experience participate in the online market.

A common occurrence is the entry of wholesalers or producers with well-known brands into the online market under the guise of "official stores." The focus right now is on the limitations set forth in the terms and conditions established by

²⁴ Maher Syalal Hasybas Simanjuntak, 'Dugaan Praktek Predatory Pricing dalam Electronic Commerce Di Indonesia' (2022) 1 Nommensen Journal of Business Law.[118].

²⁵ Effendi (n 18).[30].

the providers of the online marketplace platforms, specifically whether they permit and even encourage manufacturers to actively participate in online commerce through the online marketplace platforms with a position as an 'official store'. Customers will trust the business more if it is designated as an 'official store' by the relevant online marketplace platform because it is assumed that products sold by 'official stores' must be of guaranteed quality. Indirectly, this attitude encourages unwholesome competition among trading actors in general, specifically producers, distributors, and agents.

The operator of the online marketplace platform does not specify constraints on what it takes to be an 'official store' in a clear and accurate manner. Producers' direct participation in the online market as 'official stores' actually violates the laws governing the trade and distribution of goods, specifically Article 55 Paragraph (1) of PP No 29/2021, which firmly states that "Producers, Distributors, and Wholesalers/Wholesalers are prohibited from distributing goods in retail to consumers." All wholesale business players are prohibited from selling their products to end users at retail prices since doing so could disrupt the flow of merchandise. Additionally, it could lead to traders engaging in unfair business competition.

In several online marketplaces, it is stated that one of the parties who can enter and act as an official store in an online marketplace is one of the producers. This violates regulations regarding trade and distribution of goods, producers and or official distributors may not directly sell their products in retail to final consumers as stipulated in Article 55 paragraph (1) PP No 29/2021. Based on article 1 number 11 PP No 29/2021: "Producers are Business Actors who produce Goods". And based on Article 1 number 13 PP No 29/2021: "Distributors are Distribution Business Actors who act on their behalf and or on the appointment of Producers or suppliers or Importers based on agreements to carry out marketing activities for Goods".

According to the Oss.go.id website, which is the official resource for business permits in Indonesia, wholesale trade is defined as the "resale (without technical changes) of both new and used goods to retailers, industrial, commercial,

institutional, or professional users, or to other wholesalers or to those who act as agents or brokers in the purchase or sale of goods, both locally and internationally.” Wholesale traders or merchants, namely those who acquire the right to the products they sell, such as wholesalers, contractors, distributors, exporters, importers, cooperative associations, sales offices, and sales branch offices (but not shops), make up the majority of this business.

Retailers are controlled by divisions of industrial or mining businesses that are separated from industrial or mining locations to market the products. As a result, orders are not only received but also shipped directly from industrial or mining locations to retailers. Retail trade is the resale (without any technical changes), primarily to the general public for consumption or individual or household use, through shops, department stores, kiosks, mail-order houses, sellers door-to-door, traveling vendors, consumption cooperatives, auction houses, and other venues. Retailers typically purchase the rights to the products they sell, although some do not and instead work as agents, selling on consignment or commission.

It is clear from these two definitions that there are distinctions between the market segments and selling processes used by business actors in the wholesale trade category and the retail trade category. Producers and/or distributors are classified as dealers who engage in wholesale trade as well as actors in the manufacturing of goods. Retail trade refers to the act of agents and corporate players engaging in direct commerce with consumers. The order of the routes for the delivery of commodities could be badly harmed by combining these two forms of trading. Retail sales of products to end consumers are forbidden by Article 55 of PP No. 29/2021 for wholesale trading activities.

Therefore, in theory, technical restrictions in the commerce sector expressly ban large corporate players from selling their goods in retail. In other words, producers that enter the online market as legitimate retailers are acting in violation of Article 55 PP No 29/2021. In addition, Law No. 5 of 1999 was created in such a way that it might be used to rein in market-dominating commercial actors.

Producers can exploit their dominant position and influence for a variety of lucrative purposes.²⁶

For example, this is an explanation of the advantages of producers which causes unhealthy competition with distributors and their agents. Consumers will prefer to buy their goods through official stores which are essentially producers of the goods themselves.

- a) Producers unquestionably possess a price advantage over distributors and agents. Capital for items that producers distribute via their distributors or agents is undoubtedly more expensive than capital for goods that producers sell directly to end users. Distributors and agents undoubtedly receive a price different from the producer's cost price. Moving items from the manufacturer's location to the distributor's location and/or the agent's location will unavoidably result in expenditures, including but not limited to shipping charges, promotional costs, and costs for keeping goods. Of course, this shows that distributors and/or agents are not in a balanced position in terms of price. Producers enjoy extra benefits over distributors and/or agents.
- b) Producers have more capital than distributors, agents, and/or retailers, which gives them the ability to provide promotions. Naturally, this gives manufacturers more freedom to market their goods with a range of advantages or discounts. What is frequently observed in the field is that manufacturers can offer discounts in the form of specific vouchers for shopping at official stores, additional bonuses for specific products, bundling purchases to make it more profitable for consumers, and even free shipping promotions that are only valid for official stores. Naturally, this unfairly competes with distributors and/or agents. Only the authorities of the online marketplace itself has the power to grant a position as an approved retailer. Distributors and/or agents who operate in the same industry, namely the internet marketplace, will obviously suffer as a result.

²⁶ Mulyawan, 'Persaingan Usaha Tidak Sehat dalam Tinjauan Hukum' (2021) <<https://www.pn-palopo.go.id/30-berita/artikel/222-persaingan-usaha-tidak-sehat-dalam-tinjauan-hukum>> accessed 13 March 2023.

c) In terms of trust, it will undoubtedly give consumers the impression that products bought from online shops in online marketplaces with official store labels are high-quality and reliable. Additionally, the fact that these merchants carry well-known brand names naturally creates a psychological impression in the minds of customers that they can be trusted.

This is unbalanced in many respects, but manufacturers compete with distributors and agents directly through online markets. Of course, this undermines the idea of fair corporate rivalry. Fair corporate competition must be able to produce broad gains for a country's development.

Legally speaking, this situation looks to include unfair business competition. The rules for setting a limit and lower prices have also become the basis so that competition between distributors and agents of these producers can compete in a healthy manner. These provisions are found in the agent and distributor agreements, which include limited agreements for upper and lower price settings. This upper and lower price restriction can no longer serve as a counterbalance and aligner in commercial activities as a result of producers entering the internet marketplace. In general, corporate competition should have positive effects and benefits for economic progress. The digital disruption of technology, however, has created the potential for unhealthy commercial competition.²⁷

The Commission for the Protection of Business Competition (hereinafter referred to as KPPU) has the responsibility of safeguarding all economic actors in the current digital economy so that they continue to engage in fair and open business competition in accordance with KPPU's function and role in preventing the occurrence of monopolistic practices and other potentially unfair business competition behavior.²⁸

Conclusion

Online marketplaces' involvement in digital disruption must conform to current legal requirements. As long as fair economic rivalry is observed, the chain of

²⁷ Effendi (n 17).

²⁸ Komisi Pengawas Persaingan Usaha, 'KOMPETISI: Meraup Pasar E-Commerce' (2023).

distribution channels for goods and services in the trade channel must be maintained. For parties authorized to conduct business activities through their platform, online marketplace platform providers must impose such basic constraints, one of which is adhering to applicable trade laws. To maintain fair business competition between business actors, large business actors are not permitted to enter the internet market in the capacity to sell their goods and/or services in the form of retail commerce. The rule of fair business competition prohibits producers, distributors, and agents from competing in the same market with the same target consumers.

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