



REPUBLIC OF ALBANIA
-THE COMPETITION AUTHORITY-
The Competition Commission

DECISION

No. 122, Dated 17. 09. 2009

“On

**the authorization of concentration realized through the acquisition 100% of
the shares of Albanian AirLines MAK SH.p.k. by the company Advanced
Construction Group Sh.p.k.”**

The Competition Commission,, in its meeting held on 17.09.2009, with the participation of:

- | | |
|----------------------------|------------|
| ▪ Mrs. Lindita Milo (Lati) | Chairwoman |
| ▪ Mrs. Servete Gruda | Member |
| ▪ Mr. Koço Broka | Member |
| ▪ Mrs. Rezana Konomi | Member |

Discussed the following issue:

Subject: The authorization of concentration realized through the acquisition 100% of the shares of Albanian AirLines MAK Sh.p.k. by the company Advanced Construction Group Sh.p.k..”

Legal basis : Law No. 9121, dated 28.07.2003, titled “On the Protection of Competition”, as amended, Article 24, letter “d”, and Articles 10-12, Chapter IV “Procedures for the control of concentrations”, Articles 53-56, Regulation “On the implementation of the procedures for the concentration of the undertakings”, the Guideline “On the form of the notification of concentration” and Annex I – The Form “On the notification of concentration” .

The Competition Commission, after reviewing the Report on the notification of the concentration, and the presentation made by the Secretary General,

NOTED THAT:

I. The transaction and concentration

The transaction was realized through the Contract “On sale-purchase of shares” entered into between the parties: Albanian AirLines MAK Sh.p.k and Advanced Construction Group Sh.p.k, on 4 July 2008. In that transaction, the seller is represented by its partner, the company Mohammed Abdulmeohsin Al-Kharafi & Sons for Geberal Trading, General Contracting and Industrial Struc W.L.L., which operates on behalf of the company Albanian AirLines.

The contract is agreed upon understanding and cooperation by the parties in order to transfer the total of the shares of the company Albanian Airlines owned by the only partner Al-Kharafi Group in Advance Construction company.

The company Advanced Construction Group Sh.p.k. (the buyer), with the realization of the transaction has become the owner of 100% of the transferred shares, becoming the sole partner of the company Albanian AirLines together with all rights and obligations arising from the ownership.

The Buyer will preserve and help in the development of the commercial profile of the company Albanian AirLines⁽¹⁾ through the structuring of the economic activity envisaged in the act of foundation, in the license and other activities that are within its scope⁽²⁾. Therefore, even though in this case we are dealing with a change of ownership, in terms of the activity of Albanian Airlines company the situation will remain the same as: before, because the change of ownership, which makes a difference in the quality of the controller (single controlling partner), does not impact any management policies and market conditions.

The value of the transaction is USD 13,000,000 and will be repaid by the buyer with its financial resources and the modalities set out in Article 3 of contract for sale-purchase of shares.

The transaction through which is directly obtained the acquisition of control, bring changes on a sustainable basis to control, in terms of Article 10, paragraphs 1 and 2 of the Law No.9121, dated 28.07.2003, titled “On the Protection of Competition”, as amended, is considered to be a concentration⁽³⁾.

The realized transaction is subject to audit and should be notified to the Competition Commission, for the purpose of being authorized by the same, because it meets also the condition stipulated under paragraph 1, letters “a” and “b” of Article 12(4) of the

¹ Albanian Airlines has full authority and competence to act in compliance with the object of its own activity and to own the assets under its proprietorship. The company is qualified and licensed according the relevant legislation to exercise its activity.

² Pursuant to Article 6 of the Contract of Sale-Purchase of shares, under which are foreseen the guarantees and declarations made by the parties.

³ The transaction is made in compliance with Article 3, paragraph 1 of Regulation No. 139/2004, and the Consolidated Notification by the European Commission.

⁴ a) The aggregated turnover in the international market of all the participating undertakings is over 70 billion Lek, or aggregated turnover in the domestic market of all the participating undertakings is over 800 million Lek; and

b) The turnover in the domestic market of at least one of the the participating undertakings is over 500 million Lek .

Law No.9121, dated 28.07.2003, titled “On the Protection of Competition”, as amended.

II. The participating parties:

The company **Advanced Costruction Group** (hereinafter referred as “**Advanced Costruction**”), in the quality of **buyer**, is a limited liability company which was founded and functions in compliance with the legislation in effect in the Republic of Albania, with headquarters at the following address: Rr. Dëshmorët e 4 Shkurtit “Green Park”, K 6, Po. 19, Tirana, Albania. The object of the company is (i) import-export, wholesale and retail trading of industrial products, etj. (ii) tourist agency, transport agency, both within and without the territory the Republic of Albania, as well as air travel agency.

The company **Albanian AirLines MAK Sh.p.k** (hereinafter referred as “**Albanian AirLines**”), in the quality of **seller**, is a limited liability company which was founded and functions in compliance with the legislation in effect in the Republic of Albania, with headquarters at the following address: Rr. Dëshmorët e 4 Shkurtit “Green Park”, K 2, Po. 19, Tirana, Albania. The object of the company is the transport of goods and passengers via air travel means of transport, which are either purchased by the company, or rented by the same, travel agency, ticket sale, storage, administration and delivery services, operation of immovable property at airports that support its activity, repairing, cleaning and storage services for aircrafts or associated spare parts.

The company Albanian AirLines is the property of the sole shareholder, i.e. the company, **Mohammed Abdulmeohsin Al-Kharafi & Sons for Geberal Trading, General Contracting and Industrial Struc (Al-Kharafi Group)**, a company which was founded and functions in compliance with the legislation in effect in Kuwait, registred in the Commercial Register of Kuwait with trade number No. 53472 and register number No. 38925, since the year 1993. The activity of the company extends primarily in the field of trade and construction.

III. Turnover of the companies

The total turnover in the **international market** of the company Xhiro Mohamed Abdulmohsin Al Karafi & Sons General Trading , General Constarcting and Industrial Structures CO W.L.L , for the year 2007 is xxxxxxxxxxxx Kuwaiti Denars⁵ = xxxxxxxxxxxx miliard ALL.

The total turnover in the **internal market** is xxxxxxxx billion and xxxxxxx million ALL, where:

⁵ The source used as the basis for the exchange rate is the website www.xe.com , showing that 1 Kuwaiti Denar is exchanged with 399 Albanian Lek (ALL).

- Albania Airlines, for the year 2007 has realized a total turnover of xxxxxxxx billion ALL;
- Advanced Construction Group, for the year 2007 has realized a total turnover of xxxxxxxx million ALL.

IV. The relevant product market:

- The company Advanced Construction Group Shpk exercises its activity in the trading of construction, industrial, electrical, machinery products. In addition, it engages in services as tourist agencies, transport agencies, both within and without the territory the Republic of Albania, as well as air travel agencies.
- The company Albanian Airlines exercises its activity in the transport of goods and passengers, travel agency, ticket sale, etc.

Since the undertakings participating in this transaction exercise their activity in entirely different markets, then in the determination of the relevant market we shall refer to the market of the company which is object to the change of control. The relevant product market will be considered the passenger air transport service and cargo air transport.

The relevant geographic market: To evaluate the transaction and the effects that it will produce in the market, relevant geographic market will be considered the internal market / the territory of the Republic of Albania.

Cargo air transport services

Albania Airlines is active in offering this service having a market share of (6) 4 % for the year 2007 and 2% for the year 2008.

Passengers air transport services

Albania Airlines is active in providing passengers air transport services through flights towards destinations such as Frankfurt, Bologna, Turin, London, Istanbul, reaching an approximate number of 133 453 passengers per year⁽⁷⁾, in the year 2008 and a market share of 11%.

V. Evaluation of competition

In the internal market of air transport participate about 12 airline companies, which operate mainly short-distance flights, through the sole airport situated in Tirana. During the year 2008 were realized about 19,194 flights and were involved about 1,267,041 passengers.

The structure of the internal market is characterized by the presence of other competitors, holding sizeable market shares, such as the company Belle Air holding 37% of the market, Alitalia holding 17% of the market, Austrian Airlines holding 8% of

⁶ Source: Sector of Analysis and Research.

⁷ Source: Sector of Analysis and Research, data for the year 2008.

the market, Lufthansa holding 6% of the market, Turkish Airlines holding 6% of the market , Malev holding 4% of the market, British Airways holding 4% of the market etc.

After the realization of the concentration, the market structure does not change, because in the meaning of Article 10, paragraph 1, letter “b” of the Law No.9121, dated 28.07.2003, titled “On the Protection of Competition”, as amended, there is a substitution of ownership and the buyer shall preserve and further develop the commercial profile of the company Albanian Airlines.

Concerning the above, the realized concentration does not change the market structure after the concentration and as a consequence, neither creates, nor reinforces any dominant position in the relevant market.

FOR THESE REASONS:

The Competition Commission, pursuant to Article 24, letter “d”, and Article 56, paragraph 1, of the Law No.9121, dated 28.07.2003, titled “On the Protection of Competition”, as amended,

DECIDED:

1. To authorize the concentration realized through the acquisition 100% of the shares of Albanian AirLines MAK SH.p.k. by the company Advanced Construction Group Sh.p.k.
2. The Secretary General is in charge for the notification of the parties and the submission of the decision after the completion of payments due on the basis of Regulation “On the Determination of Expenses for the Proceedings by the Competition Authority”.

This decision takes immediate effect.

THE COMPETITION COMMISSION

Servete Gruda

(_____)
Member

Rezana Konomi

(_____)
Member

Koço Broka

(_____)
Member

Lindita Milo (Lati)

CHAIRWOMAN