



REPUBLIC OF ALBANIA
-THE COMPETITION AUTHORITY-
The Competition Commission

No. ___ Prot.,.

Date : 14.10.2009

DECISION

No. 125, Dated 08 .10. 2009

“On

Imposition of fines into the enterprises “Atlas” Sh.a and “Bloja” Sh.a for restriction of competition in the wheat import and flour production and sales market”.

The Competition Commission, in its meeting held on 08.10. 2009, with the participation of:

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

Discussed the following issue:

Subject: On the prohibited agreement between the undertakings “Atlas” Sh.a and “Bloja” Sh.a resulting in restriction of competition in the wheat import and flour production and sales market.

Legal basis : Law No. 9121, dated 28.07.2003, titled “On the Protection of Competition”, as amended, Article 4, paragraph 1, Article 24, letter “d”;; Law No. 8485, dated 11. 11. 1999, titled “The Code of Administrative Procedures”,

The Competition Authority, in exercise of his legal functions, and motivated by the concern raised by manufacturers of bread, as well as the concern expressed in the media about the bread price increases in the beginning of the year 2008, took into consideration and proceeded to make an evaluation of the level of competition in the affected markets.

The Competition Commission, upon reviewing the following documents:

- The report presented by the Working Group for the in-depth investigation in the wheat import and flour production market, launched through Decision No. 88, dated 02.10.2008, adopted by the Competition Commission;
- The report presented by the Secretary General;
- The claims of the enterprises "Atlas" Sh.a and "Bloja" Sh.a , expressed during the hearing session held on 27.2009, and submitted in writing to the Competition Authority, with Requisitions No. 287/1 dated 21. 07. 2009, No. 287/2 dated 21. 07.2009, No. 321 prot., dated 13. 08. 2009, and No. 323 Prot., dated 14. 08. 2009.

NOTED THAT:

I. THE PROCEDURE

The procedure followed during the investigation is based on Chapter II and III of the IInd Part of Law No. 9121, dated 28.07.2003, titled "On the Protection of Competition", as amended (hereinafter referred as the "Law"), as well as Law No. 8485, dated 11.11.1999 titled "The Code of Administrative Procedures".

Pursuant to Article 24, letter "d" and Article 43, paragraph 1, of the Law, as well as Article 21, paragraph 4, of Regulation "On the functioning of the Competition Authority", and Decisions No. 88, dated 02.10.2008 No. 101, dated 05.02.2009, the Competition Commission decided: "The launching of in-depth investigation in the wheat import and flour production and sales market".

1. At the end of investigative procedures, the Secretariat has submitted the relevant report to the Competition Commission.
2. After the review of the aforementioned report, the Competition Commission noticed the existence of a prohibited agreement to in the market of wheat import and flour production and sales, between the companies "Atlas" sh.a. and "Bloja" sh.a. and through the adoption of Decision No. 113 dated 19/05/2009, decided to stop implementing this agreement, according the dispositions of the Law.
3. The decision as well as the report on the in-depth investigation was communicated to the enterprises "Atlas" sh.a. and "Bloja" sh.a. through requisition No. 228, dated 25.05.2009, signed by the Secretary General of the Competition Authority.
4. In implementation of Article 39 of 'Law "parties under investigation presented their claims on report on the in-depth investigation in the course of the hearing session, in written¹ form. Their claims have been taken into consideration by the Competition Commission.

¹ Respectively, Requisitions No. 287/1 dated 21. 07. 2009, No. 287/2 dated 21. 07.2009, No. 321 prot., dated 13. 08. 2009, and No. 323 prot., dated 14. 08. 2009

II. PERIOD OF INVESTIGATION AND ENTERPRISES UNDER INVESTIGATION

1. The investigation period, determined by the Competition Commission through Decision No. 88, dated 02.10.2008 “On the launching of in-depth investigation in the wheat import and flour production and sales market”, is the period of time 01 January 2005 -31 August 2008.
2. The enterprises under investigation are determined in the Decisions No. 88 dated 02. 10. 2008 and No. 101 dated 05. 02. 2009 of the Competition Commission.

III. THE MARKET STRUCTURE

3. Pursuant to Article 3, paragraph 7 of the Law and the Decision adopted by the Competition Commission No. 76, dated 07. 04. 2008 “On the approval of the guideline for the definition of relevant market”, the relevant market is defined as being composed of two elements:
4.
 - a. The product market;
 - b. The geographical market.

III.1 The relevant product market

5. The relevant product market includes:
 - The wheat import market for flour production²;
 - The market of production and sale of wheat destined for bread production.

The geographical market is the territory of the Republic of Albania.

The market structure of wheat import:

The wheat import market has the characteristics of a very concentrated market.³

6. The five main enterprises in the wheat import market are “Bloja”Sh.a, “Atlas”Sh.a, “Shoqëria Anonime Miell” Sh.a, “IAM” Shpk and “Glan”Shpk. The market shares⁴ occupied by these enterprises (CR5) in the years 2005-2008 are, respectively, 95.66%, 95.37% 82.08% and 85.35%.⁵

² In the market analysis of imported wheat is not included the amount of imported wheat for cultivation purposes, and the imported wheat of type “Durum”, which is used for the production of pasta products.

³ The concentration index in the year 2005 was 2191; in the year 2006 was 2351, in the year 2007 was 1545 and for the first eight-months of year 2008 this index was 1805.

⁴ The calculation of market shares is done on the basis of data obtained by the General Customs Directorate.

⁵ CR5 for the whole year 2008 was 82.7%, while HHI in the year 2008 was 1725.

Submarket of wheat sale for bread production.

7. During the years 2005-2006, the wheat market sale has been very concentrated.⁶ From the analysis of market shares results that for the years 2005-2006, the five main competitors, i.e. “Bloja” Sh.a, “Alagro” Shpk, “Shoqëria Anonime Mielli” Sh.a, “IAM” Shpk and “Vllaznimi B” Shpk, together own 100% of the market.

8. In the year 2007, the main competitors in the market are the following enterprises: “Bloja” Sh.a, “IAM” Shpk, “Shoqëria Anonime Mielli” Sh.a, “ALAGRO” Shpk and “Vllaznimi B” Shpk, that aggregated occupy 90% of the market. During the first eight months of 2008, the value of CR5 is 78%, where the enterprises included are “Bloja” Sh.a, “Atlas” Sh.a, “Shoqëria Anonime Mielli” Sh.a, “IAM” Shpk and “GLAN” Shpk.

The market of flour production and sale for bread production

9. From the analysis of market shares for the years 2005-2006-2007 it can be noticed that the market share of the three main enterprises operating in the market is rather high⁷; the three enterprises “Atlas” Sh.a, “Bloja” Sh.a and “Miell Tirana” Sh.a are the main operating in the market. In the year 2008, the enterprises “Atlas” Sh.a and “Bloja” Sh.a owned equal market shares of 25% each.

10. The three main enterprises operating in the flour sales market (CR3) are “Atlas” Sh.a, “Bloja” Sh.a and “Shoqëria Anonime Mielli” Sh.a., which cumulatively occupy 88% of the market on the year 2005, 83% of the market on the year 2006, 73% of the market on the year 2007 and for the period January-August 2008, occupy 69% of the market. The enterprises “Bloja” Sh.a. and “Atlas” Sh.a. retain the same market position during the period 2006-2008.

11. During the years 2005-2007 the flour production market has been very concentrated. The HHI index in the year 2005 was 2,765, following a decrease in the year 2006 and again falling to 2,036 during the year 2007. The level of concentration has decreased from year to year by achieving a proportional share during the first eight months of the year 2008 between the enterprises “Bloja” Sh.a and “Atlas” Sh.a. However, the level of market concentration at 1,842 in that year is still high.

6 The Herfindahl-Hirschmann (IHH) index is used specifically for measuring the market concentration, i.e. the scale at which a small number of undertakings occupy a great percentage of the product market. The IHH Index is used as a possible indicator of market power, or degree of competition between the undertakings. This index measures the degree of concentration in the market by summing up all the squared values of market share percentages of all the undertakings in the industry. The interpretation of the index is as follows: HHI < 1000 – not concentrated, 1000 < HHI < 1800 - moderately concentrated, HHI > 1800 – highly not concentrated. In the year 2005, the value of HHI index was 3142.7; in the year 2006 HHI was 3331.4; in the year 2007 HHI was 1841.9 and for the first eight-months of year 2008, the value of HHI index was 1469.4.

7 (Concentration rate 3) The cumulative amount of market shares occupied by the three biggest undertakings operating in the market. In the wheat sales market, CR3 is XXX % in the year 2005; XXX % in the year 2006; XXX % in the year 2007 and XXX % for the first eight-months of year 2008.

12. From the analysis of flour sales market market for bread production resulted that this market presents the character of an oligopolistic market with three enterprises with consolidated market shares during the years 2005-2008. The enterprises with market power are “Atlas”Sh.a, “Bloja” Sh.a. and “Shoqëria Anonime Mielli” Sh.a.

V. Prohibited agreement between “Bloja” Sh.a and “Atlas” Sh.a

13. From the inspection performed by the Secretariat of the Competition Authority on date 22.01.2009 at the premises of the enterprise “Atlas” SH.A, it resulted that in the computer machines of this enterprise were found various electronic files⁸, which contained data regarding the transactions running between the enterprise “Bloja” Sh.a and the enterprise “Atlas” Sh.a. These files were printed out of the finance office computer and have been brought as evidence in the inspection records held on date 22.01.2009, and have been enumerated from 1-12⁹ (referring to the investigation report).

14. As a result of the inspection in the enterprise “Bloja” Sh.a, in the computer of the finance office of this enterprise was found an electronic file under the filename ““Bloja Atlasi” 2008”, where was contained the “Summary Table of Custom Clearance for the year 2008”, where were represented data on import during the year 2008, such as : quantities, prices, costs, custom taxes, VAT, custom clearance payments. The data contained in that table correspond to the data found in the computer of the finance office of the enterprise “Atlas” Sh.a.

15. All the evidence found in the course of the inspections made in the enterprises “Bloja” sh.a and Atlas sh.a were certified by the information obtained by the General Customs Derectorate, and which are presented in the following table:

Table on joint wheat imports from the enterprises “Atlas” Sh.a and “Bloja” Sh.a¹⁰

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From the verification of aforementioned evidence, resulted the following:

- These two enterprises that possess a significant economic strength in the market of flour production and sale for bread production, exchange

⁸ These electronic files have been printed out and their submission was formalized by recording it in the Charge Sheet dated 22.01.2009. During the hearing session, the interested undertakings did not raise any objections regarding the content of these files that were taken by the Secretariat.

⁹ The numbering has been performed by the Inspection Group. The data contained in the files have been printed by the Working Group and are enclosed to the Charge Sheet dated 22. 01. 2009. As was stated above, this Charge Sheet is signed by the undertakings, and none of them has raised any objections in their regard.

¹⁰ Data Source: The General Customs Directorate.

information on the offer, therefore are knowledgeable on each-other's offering strength.

- The enterprises "Atlas" Sh.a and "Bloja" Sh.a Maintain accurate data on each-others, *quantities, prices, costs, custom taxes, VAT, custom payments, custom clearance payments, etc.*
- Share customs expenses, spedition expenses and other expenses.
- Maintain accurate data on each-others obligations (cash-ins and debit situations), data on amount of wheat purchased and customs expenses.
- Jointly own XXXX% of the wheat import market; XXX % of the wheat sales market, XXX% (XXX% "Atlas" SH.A and XXX% "Bloja" SH.A) of the flour production market; own high technology and processing capacities, thus becoming a powerful factor in limiting free and effective market competition.
- The enterprises "Atlas" Sh.a and "Bloja" Sh.a have sufficient market power to cause restrictions of competition, because the degree of concentration, stemming from the considerable market shares held by these two enterprises, is rather high. The counterveiling power of all the other competitors is smaller than that of "Bloja" Sh.a and "Atlas" Sh.a. The counterveiling power of the client (small mills and bread producers) is small. The enterprises have created stability over the years regarding the market share and represent two of three main competitors (CR3) in all the markets concerned.

16. It has been noted that during the period of the agreement, the enterprises Atlas Sh.a and Bloja Sh.a, have not demonstrated a competitive behaviour in the flour production and sales market, because:

- Referring to the tax bills¹¹ of flour sales of the company "Bloja"sh.a. and "Atlas" sh.a. for the period 1-27 February 2008, results that both companies have applied the same price of the sale of flour to the value of XXXXXX ALL / kg. Specifically, the company Atlas sh.a. has billed at a price of XXX ALL/ kg in XXXXX invoices out of a total of XXXXX invoices¹², while "Bloja" sh.a. enterprise has billed at the same sales price in in XXX invoices out of a total of XXXXX invoices.
- These two companies follow the same trend of the sales price of flour for the period March to August 2008. On February 25 and 27 of 2008, these companies have increased the sales price of the flour with the same index of 1.2613, as is certified by the tax bills of sale of flour submitted by the enterprises themselves.

¹¹ Sequestered from the enterprise "BLOJA" sh.a., according to the inspection records of dates 26. 06. 2008 and 20. 01. 2009, and submitted to the Competition Authority by "ATLAS" sh.a. through Requisition No. 447 dated 28. 10. 2008.

¹² Enterprise "Atlas Sh.a trades different brands of flour. The price fixing at XXX ALL/kg has been applied for the flour of brand Assos Pl.50 kg, which represents about 36% of the total volume of the flour sold during the month of February 2008. The number of invoices issued for this brand of flour is XXX.

¹³ Refer to the sales tax invoices of date 25 February 2008 for the enterprise "Bloja" sh.a. and 27 February 2008 for the enterprise "Atlas" sh.a.

- o The written records of the estimates derived from tax authorities¹⁴, turned out that these two enterprises often applied the same sale price for the flour product during February 2008.

20. Considering the sales price of flour, the sharing of supply sources during the years 2007-2008, as well as the non-competitive behaviour of these enterprises in the market, is certified the existence of a prohibited agreement¹⁵ between the enterprises "Bloja" Sh.a and "Atlas" Sh.a., as foreseen under Article 4, paragraph 1 of the Law. According to the evidence administered, the agreement has extended its effect during the period October 2007 -31 August 2008.

21. The prohibited agreement is a horizontal agreement, because the enterprises operate at the same market level (in the market for import of wheat for bread production). Their vertical integration has brought about consequences in the wheat market sales and the production and sale of flour for bread production.

22. The Competition Commission, after observing that the agreement is prohibited, adopted Decision No. 113, dated 19.05.2009, titled " On the prohibition of the agreement in the wheat import and flour production market entered between the undertakings "Atlas" Sh.a. and "Bloja" Sh.a." imposed a ban on this agreement in compliance with the dispositions of the Law. Decision No. 113 was communicated to these enterprises.

23. The Competition Commission, in assessing the overall market behavior of enterprises is guided by the public interest in general, and the interests of the consumers in particular.

Based on the above, the Competition Commission concluded that the enterprises "Atlas" sh.a. and "Bloja" sh.a., did not compete in the relevant market, as the evidence and the analysis of relevant markets shows, these enterprises coordinate market behaviour terms of determining the sales price of the relevant products, and by sharing the sources of supply (wheat imports).

This coordinated practice is defined on the basis of Article 3, paragraph 4 and Article 4, paragraph 1, letters "a" and "c" Law No. 9121, dated 28.07.2003, titled "On the Protection of Competition", as amended, and constitutes a prohibited agreement, because hinders and restricts competition in the relevant market.

¹⁴ According to the reports of tax evaluation brought by the enterprises "Bloja" SH.A and "Atlas" SH.A after the conclusion of the hearing session, where are presented the declarations of the bakers.

¹⁵ The joint purchases are not prohibited, but under the condition that the jointly made purchase does not restrict competition. In our case, the enterprises "ATLAS" Sh.a and "BLOJA" Sh.a have engaged in joint purchases, but they have brought about the restriction of competition.

FOR THE ABOVE REASONS:

The Competition Commission, pursuant to Article 24, letter “d”, Article 4, paragraph 1, letters “a” and “c”, Article 74, paragraph 1, letter “a”, and Article 80 of Law No.9121, dated 28.07.2003, titled “On the Protection of Competition”, as amended,

DECIDED:

1. To impose a fine into the company “Bloja” Sh.a , for participation in a prohibited agreement, at the amount of 38 548 251(thirty-eight million five hundred forty-eight and two hundred fifty-one ALL.;
2. To impose a fine into the company “Atlas” Sh.a for participation in a prohibited agreement, at the amount of 27 848 563 (twenty-seven million eight hundred forty-eight and five hundred sixty-three ALL;
3. The Tax Investigation Unit Tax Investigation Unit at the General Tax Directorate is in charge to implement the decision for the imposition of the fine.
4. The Secretary General is in charge for the notification of the parties.
5. This decision takes effect immediately.

THE COMPETITION COMMISSION

Servete Gruda

Rezana Konomi

Koço Broka

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Member

Member

Member

Lindita Milo (Lati)

CHAIRWOMAN