



REPUBLIC OF ALBANIA
-THE COMPETITION AUTHORITY-
The Competition Commission

No.____ Prot.

Dated 19.11.2009

DECISION

No. 129, dated 19.11.2009

“On

“The opening of the in-depth investigation procedure in the market of hydrocarbon Diesel D2 regarding the company “ARMO” SHA”

The Competition Commission, at its meeting held on 19 /11/ 2009, with the participation of:

| | |
|--------------------------|------------|
| Mrs. Lindita MILO (LATI) | Chairwoman |
| Mrs. Servete GRUDA | Member |
| Mr. Koço BROKA | Member |
| Mrs. Rezana KONOMI | Member |

Addressed the following issue:

Subject: Review of the Preliminary Investigation Report “On the behaviour of company ARMO sha in the market of production and wholesale of hydrocarbon product for vehicles called Diesel D2.

Legal basis: Law No. 9121, dated 28.07.2003, titled “On the protection of competition”, Article 24, letter ‘d’, Article 26 and Article 43, paragraph 1, and Regulation on the Functioning of the Competition Authority, Article 12.

The Competition Commission, upon reviewing the following documents:

- Preliminary Investigation Report “On the behaviour of company ARMO sha in the market of production and wholesale of hydrocarbon product for vehicles called Diesel D2.
- The report prepared by the Secretariat of the Competition Authority.

NOTED THAT:

1. On the basis of the Preliminary Investigation on the behaviour of the company ARMO sha in the market of production, and wholesale and retail trade of the hydrocarbon product used for motorized vehicles Diesel D2, resulted that the company ARMO sha owns 80.75% of the relevant market

for the product Diesel D2 for the period under investigation in the year 2009. Pursuant to Article 8 Law No. 9121, dated 28.07.2003, titled "On the protection of competition", as well as on the basis of the Guidelines of the European Commission¹, "On the implementation of Article 82 of the Treaty", the company ARMO sha enjoys dominant position in the market of production, and wholesale and retail trade of the hydrocarbon product used for motorized vehicles Diesel D2.

The company "ARMO" sh.a is vertically integrated in the wholesale and retail market of hydrocarbons, because one of its shareholders owns 100% of the shares of ANIKA sha companysh, which owns 70% of the shares of the consortium "AMRA" sh.a, which, on the other hand, owns 85 % of the shares of company ARMO Sh.A. Therefore, the shareholder who owns 100% of the shares in the company of wholesale trade "TAÇI OIL INTERNATIONAL TRADING AND SUPPLY COMPANY" SHA and in the company of retail trade "KUID" sh.p.k, indirectly owns 68% of the shares of "ARMO" Sh.a. company.

3. From the verification of the sales documentation of the company ARMO sha, results that the company sells at different prices the same product on the same day to various wholesale companies, and this action may position those companies in an unfavorable position with regard to competition, which may violate Article 9, paragraphs 1 and 2 (letter "c") of Law No. 9121, dated 28.07.2003, titled "On the protection of competition". This behaviour of the company ARMO Sha has been consistent throughout the period under investigation.
4. During the investigation period, ARMO sh.a has sold directly even in the retail market (downstream market). The sale of Diesel (D2) product by ARMO sha company through gas stations is prohibited by Law No. 8450, dated 24.02.1999, "On the refinement, transport and trading of oil, gas and their byproducts". In this law is determined that the sale of Diesel D2 by the refineries maybe realized only by companies that hold an A category license (companies selling in the upstream market).
5. The trading of hydrocarbon product Diesel D2 simultaneously made in the wholesale and the retail market by the company ARMO sha, has created to that company an obvious competitive advantage, because, being the main operator in the wholesale market for Diesel D2, this company has had exclusivity to determine the price at the wholesale level of the market, thus placing the other licensed wholesale operators in unfavourable market position.
6. Pursuant to Article 9, paragraphs 1 and 2 of Law No. 9121, dated 28.07.2003, titled "On the protection of competition", may constitute abuse with dominant position.

FOR THE ABOVE REASONS:

The Competition Commission, pursuant to Law No. 9121, dated 28.07.2003, titled "On the protection of competition", Article 24, letter 'd', Article 26 and Article 43, paragraph 1, and the Regulation on the Functioning of the Competition

¹ The expertise of the Commission suggests that a company has effectively dominant position in the market of the relevant market share is at least 40%.

Authority, Article 12 and Article 21, paragraph 4, and upon proposal of the Secretariat,

DECIDED:

- I. To launch the in-depth investigation procedure against the company ARMO sha, with object the verification of existence of abuse with dominant position in the relevant market of hydrocarbon product Diesel D2;
 - II. The in-depth investigation procedure should include the time period 01.01.2009 to 31.10.2009.
- I. The Secretary General is in charge to ensure the implementation of this decision and the notification of the parties involved.

This decision enters into effect immediately.

THE COMPETITION COMMISSION

Servete Gruda

(_____)
Member

Koço Broka

(_____)
Member

Rezana Konomi

(_____)
Member

Lindita Milo (Lati)

CHAIRWOMAN