



**REPUBLIC OF ALBANIA
-COMPETITION AUTHORITY-
COMPETITION COMMISSION**

No. _____ prot

Tirana, on 14.12.2010

DECISION

No 162 of 14 December 2010

**“On
concluding the in-depth investigation of undertakings LA PETROLIFERA
ITALO ALBANESE SH.A., ROMANO PORT SH.A. AND INTER GAZ SH.A.
regarding abuse of dominant position in the market of coastal loading and
unloading and storage of liquefied gas”**

The Competition Commission, composed of

- Mrs Lindita Milo (Lati) Chair
- Mrs Servete Gruda Member
- Mr Koço Broka Member
- Mrs Rezana Konomi Member

in its meeting of 14 December 2010 reviewed the Case with:

Subject-matter: Abuse of dominant position by undertakings LA PETROLIFERA ITALO ALBANESE SH.A., ROMANO PORT SH.A. AND INTER GAZ SH.A. in the market of coastal loading and unloading and storage of liquefied gas;

Legal Basis: Articles 8, 9 (2) (d) and 24 (d) of Law no. 9121 of 28 July 2003 “On Competition Protection”;
Law no. 8485 of 11 November 1999, “Administrative Procedure Code”;

Parties under Investigation: 1) **“LA PETROLIFERA ITALO ALBANESE” SHA**, with Taxable Person Identification Number (NIPT) K71906007R and residing at: ish Fabrika e Sodës, Vlora;
2) **“ROMANO PORT” SHA**, with Taxable Person Identification Number (NIPT) K51625501O and residing at: Durres, Porto Romano;
3) **“INTERGAZ” SHA**, with Taxable Person Identification Number (NIPT) K21916802b and residing at: Durres, Porto Romano.

Investigation period: As specified in the Competition Commission Decision no. 147 of 23 June 2010, the investigation period is from 01.06.2009 till 31.05.2010.

After reviewing

- the Report of the working group which carried out the investigation into the market of liquefied petroleum gas loading-unloading and storage market, initiated by Competition Commission Decision no. 147 of 23 June 2010; the Secretary-General Report; and
- the arguments submitted by “ROMANO PORT” SHA, “INTERGAZ” SHA and “LA PETROLIFERA ITALO ALBANESE” SH.A in the hearings of 1 September 2010 and 13 October 2010 and filed with the Competition Authority on 1 September 2010 (No. Prot 343/2) and 30 September 2010 (No. Prot 313/7)

NOTES THAT:

I. PROCEDURE

1. The investigation procedure is pursuant to Chapter II of Part II and Chapters II and III of Part III of Law no. 9121 of 28 July 2003 “On Competition Protection” (hereinafter the “Law”) and Law no. 8485 of 11 November 1999, “Administrative Procedure Code”.
2. Pursuant to Article 28 (a) of the Law, following the complaints from Global Gaz Sh.a., Mare Oil Sh.a. and Burimi SRL and the request from the Ministry of Economy, Trade and Energy, the Competition Authority Secretariat monitored the market of importing and wholesaling liquefied petroleum gas, in order to determine whether there were any elements that were restricting or distorting competition in that market.
3. Based on the findings thereunder, the Competition Authority Secretariat, pursuant to Article 42 of the Law and Decision no. 1 of 17 February 2010 by the Secretary-General, decided to initiate an inquiry into the market of coastal loading-unloading and storing of liquefied petroleum gas in order to determine whether there were any elements that were restricting or distorting competition in that market.
4. Following an assessment of the evidence collected during the inspections, the working group prepared a Report “On taking interim measures in the market of loading-and-unloading and storing liquefied gas”, whereby it proposed to the Competition Commission to take interim measures.
5. After reviewing the working group Report and hearing PIA sh.a. in a hearing organized on 10 March 2010 pursuant to Articles 24 (d) and 44 of the Law, the Competition Commission approved Decision no. 140 of 10 March 2010. Given the risk of serious and irreparable damage to competition and the potential violation of Article 9 (2) of the Law, the Competition Commission

decided to take interim measures for a period until the completion of investigation.

6. The Competition Commission organized hearings with LPG importers on 2 June 2010.
7. The inquiry into the LPG loading-unloading and storage market found that PIA sh.a., Romano Port sh.a. and Inter Gaz sh.a. might have abused with their dominant position in their respective markets pursuant to Article 9 (2) of the Law by means of the conditions set in the provision of their services. Because of this, pursuant to Article 24 (d) and Article 43 (1) of the Law and Articles 12 and 21 (4) of the Regulation on the functioning of the Competition Authority, the Competition Commission took Decision no. 147 of 23 June 2010 whereby it decided to initiate an investigation into the market of coastal loading-and-unloading and storing of the liquefied gas, in relation to the following undertakings: "LA PETROLIFERA ITALO ALBANESE" SHA; "ROMANO PORT" SHA and "INTER GAZ" SHA. The purpose of the investigation was to determine whether there was an abuse of dominant power in the respective markets.
8. Pursuant to Articles 24 (d), 26 and 43 (2) of the Law and Decision no. 147 of 23 June 2010, the Competition Commission took Decision no. 148 of 24 June 2010 "On specifying the steps of the investigation into the loading-unloading and storage of liquefied petroleum gas" whereby it set the investigation stages and its completion deadline, which was 1 July 2010.
9. Upon the investigation completion, the Secretariat submitted to the Competition Commission the report on the investigation into the loading-unloading and storage of liquefied gas, which was also submitted to the undertakings under investigation LA PETROLIFERA ITALO ALBANESE SH.A., ROMANO PORT SH.A. and INTER GAZ SH.A.
10. Pursuant to Article 39 of the Law, undertakings LA PETROLIFERA ITALO ALBANESE SH.A., ROMANO PORT SH.A. and INTER GAZ SH.A. submitted their comments on the Investigation Report in the hearings of 01.09.2010 and 13.10.2010.
11. Pursuant to Article 39 of the Law, the Competition Commission invited representatives from the Authorized State Body (OSHA) to a consultation roundtable which was organized on 2 September 2010.

II. THE MARKET

11. The respective market is reviewed in its two dimensions:
 - a) The product market
 - b) The geographic market

II.1. *The respective product (service) market*

12. The product market is the liquefied petroleum gas coastal loading-unloading and storage market, which is further divided into:

1. The liquefied petroleum gas coastal loading and loading market, which is provided in two sites: in the area of the former Na₂CO₃-PVC Factory in the Bay of Vlora, where the service is provided by PETROLIFERA ITALO ALBANESE SH.A. (PIA), and in the area of Porto Romano, Durres, where the service is provided by Romano Port SH.A. These two undertakings were established and operate under a concession agreement, and are the only entry points providing this service via sea routes in the period under investigation.
2. The coastal liquefied gas storage terminal can be provided by undertakings which have built storage facilities in those sites. In the period under investigation the storage service was provided by PIA sh.a. and Inter Gaz sh.a.

Both market segments are interrelated and cannot operate separately.

II.2 *The respective geographic market*

13. The geographic market includes the area in which the undertakings supply and demand products and/or services where competition conditions are homogenous. Since the undertakings that have a demand for the service of LPG coastal loading-unloading and storage operate throughout Albania, the entire Republic of Albania was determined as the geographic market.

III.3 § *Substitutability*

14. There is no substitutability between the coastal loading-unloading and storage of liquefied gas and the same service via rail or road transport, because of the high costs and other essential limitations. In the period under investigation—June 2009-May 2010—the importing of LPG via road and rail transport was 4.9% of its total import.

15. The LPG loading-unloading and storage services that are provided in the coastal terminal in Vlora by PIA sh.a. and in the coastal terminal in Durres by Romano Port sh.a. and Intergaz sh.a. are closely substitutable. Thus, an LPG importer may receive the loading-unloading and storage services in both coastal terminals, but business models and transaction costs vary between the terminals. PIA sh.a. provides the loading-unloading and storage services under long-term 3-5-year agreements, which are concluded at least 12 months before the beginning of the provision of the services, at a monthly or unit fee if the amount specified in the contract is exceeded, and against a financial security. On the other hand, the services at the coastal terminal in Porto Romano are provided under two types of contracts: (a) an agreement concluded with Romano Port sh.a. for LPG loading-unloading against a tariff specified per service unit, and (b) an agreement concluded with undertakings which rent out storage capacities under bilateral agreements between operators. In the period under investigation Inter Gas sh.a. was the only undertaking that owned coastal storage facilities and rented them out.

III. DEVELOPMENTS IN THE LPG COASTAL LOADING-UNLOADING AND STORAGE

16. The method of operation in the LPG coastal loading-unloading and storage market has undergone essential changes with regard to the seaport infrastructure through which the services are provided. Pursuant to Council of Ministers' Decree of 25 July 2007 "On barring ships transporting oil, gas and their by-products in the ports of Durres and Shengjin", LPG-importing undertakings cannot load or unload LPG directly from or to their tanker trucks.
17. At the same time, Council of Ministers' Decree no. 251 of 20 April 2001 "On approving the Study on the Designation of Suitable Areas for Building Oil, Gas and Their By-Products Coastal Storage Facilities" specified the areas where the coastal facilities would be built in the area of Porto Romano and in the area of former PVC Factory in Vlora.
18. Pursuant to Law no. 9231 of 13 May 2004 "On the Ratification of the BOO Concession Agreement on the Building and Operation of a Coastal Oil Storage Facility in the Bay of Vlora and the Ratification of the BOT Concession Agreement on the Building and Operation of the Seaport Infrastructure Supporting the Coastal Terminal in the Bay of Vlora", PIA sh.a. was granted the exclusive right to provide the service of loading-unloading and storage in the Bay of Vlora.
19. Pursuant to Law no. 9298 of 11 July 2004 "On the Ratification of the BOT Concession Agreement on the Building and Operation of the Oil and Gas Terminal in the Coastal Area of Porto-Romano, Durres" Romano Port sh.a. was granted the exclusive right to provide the service of loading-unloading in the area of Porto Romano.

III.1 Market Shares and Changes Thereto

20. In a service market, the market share indicator depends on the customer demand for a particular service. As a result, the market share indicator for the loading-unloading and storage via sea route service for the undertakings providing these services is approximate and depends on the level of LPG importing via sea routes and is stated in terms of physical quantities of imported LPG. Thus, the coastal terminal market shares depend on the activity of LPG importers through those two terminals.
21. According to DG Customs data on imported LPG during the period under investigation (June 2009-May 2010), 55.2% of the LPG imported via sea routes was processed (or terminated) through the coastal terminal in Vlora, i.e. through PIA sh.a., and 44.8% was imported through the coastal terminal in Durres, i.e. through Romano Port sh.a.
22. The calculation of market shares of those undertakings depends on the activities of LPG importers through those two coastal terminals. As shown in the table below, which shows the volume of imported LPG in June 2009-May 2010, PIA imported 55.2% of LPG as of the beginning of its activity in Port of Vlora 1. The rest (44.8%) was imported through Romano Port.

Table no. 1: Quantity of gas (in litres) by customs house, June 2009-May 2010

Customs	Quantity (litres)	Market Share
Durres	60 666 038	44.8%
Vlora	74 660 815	55.2%
Total	135 326 855	100%

Source: Directorate General of Customs data

III.2 Legal and Economic Barriers

III.2.1 Legal Barriers

23. The coastal loading-unloading and storage services are provided in two intertwined segments that cannot operate separately. Under the concession agreements that the Albanian Government has concluded with those two undertakings, they have been granted the exclusive right to provide the service of LPG loading-unloading and storage, with PIA sh.a. having an exclusive right to loading-unloading and storage and Romano Port sh.a. having an exclusive right to LPG loading-unloading. Pursuant to the provisions of the Law, those exclusive rights are a market entry barrier.

III.2.2 Economic Barriers

24. Service costs are significant at both service provision sites: in the Porto Romano terminal LPG-importing companies have to invest in the building of storage facilities (or rent them) while in PIA's coastal terminal they have to submit a financial security equal to the storage facility building costs. The financial costs are a significant market entry barrier.

25. Based on the above, pursuant to the Law, undertakings PIA sh.a., Romano Port sh.a. and Inter Gaz sh.a. had a dominant power position in the market of LPG coastal loading-unloading and storage in the period under investigation.

IV. MARKET BEHAVIOUR OF UNDERTAKINGS

26. **ROMANO PORT sh.a.** began its loading-unloading business in April 2009. Companies that import LPG via sea routes receive from this company only the loading and unloading service, which cannot be provided as separate from storage. Thus, importers have to invest by building storage facilities at the port, or rent other storage facilities that have been already built by other LPG-importing companies.

27. The inspection in Porto Romano shows that five LPG storage facilities had been built, with a capacity of 10,000 m³. They were owned by INTER GAZ sh.a., one of the shareholders of which is also a shareholder in Romano Port sh.a.

28. OSHA had approved the service fees of ROMANO PORT sh.a., which also provides services to all LPG-importing operators that have storage facilities at the port.

29. INTERGAZ sh.a., which is an LPG importer and dealer, was the only undertaking that owned storage facilities with a capacity of 10,000 m³ in the

area of Porto Romano in the period under investigation. The data that INTERGAZ sh.a. submitted showed that it had lease contracts with other undertakings operating in the LPG market for a part of the storage capacity it owned.

30. None of the lease contracts between Intergaz sh.a. and the other LPG importers and dealers allowed a sublease arrangement.
31. **LA PETROLIFERA ITALO ALBANESE sh.a.** began its LPG loading-unloading and storage business in June 2009. According to the data collected during the inspection and the information that the undertaking submitted, two LPG storage facilities, with a capacity of 2,450 m³ each, had been built and were operated in that terminal; each of them was operated at a capacity of 2,000 m³ due to security reasons.
32. Two spherical tanks, which are owned by PIA, were rented out to various LPG importers. The evidence collected during the investigation show that PIA submitted its first bids to LPG-importing undertakings in 2004-2005, quoting a monthly fee of EUR 112,000-160,000 against a storage capacity of 4,000 m² and annual capacity of 30,000 metric tonnes and a financial security as much as three times the monthly fee.
33. Both tanks were rented to KALAJA sh.a. (which imports and sells LPG) under an agreement to store and handle liquefied products that was concluded between LA PETROLIFERA ITALO ALBANESE sh.a. and KALAJA sh.a. and Addendum no. 1 of 23 June 2009 and Annex A of 29 August 2008. The evidence shows that PIA sh.a. has made available to KALAJA sh.a. all its LPG storage capacity and its loading and unloading plant for a period of five years. In addition, paragraph C.2 of Annex A specifies a charge of EUR 12,75 per any metric tonne that exceeds the annual quantity of 38,000 metric tonnes. The abovementioned fees were valid for 2009, while the fees for the period after that would increase on the basis of a formula specified in paragraph D of Annex A. paragraph G of the Agreement specified the bank security that would guarantee the agreement. At the signing of the Agreement the customer has to submit bank a guarantee of EUR 1,100,000 that should be valid throughout the period of the agreement.
34. Under the Agreement KALAJA sh.a. is the only undertaking with the right to unload and store its products in the storage facilities owned by PIA sh.a. PIA sh.a. does not currently have any other available LPG loading-unloading and storage as all its storage capacity in Vlora 1 Port have been made available to KALAJA sh.a.
35. Other importing undertakings which need to unload LPG in that terminal can do so if they conclude an agreement with KALAJA sh.a. or sign long-term agreements on a 12-month notice or longer.
36. An analysis of the data received from the Directorate General of Customs showed that from 1 July 2009 till 31 May 2010 two additional ships with LPG were unloaded in that Port on behalf of other market operators: MARE OIL sh.a. and GLOBAL GAZ sh.a. Both ships were unloaded with a permission by KALAJA sh.a., as verified by the statements of Deputy Director of PIA sh.a. terminal and a letter found during the inspection in that company, which was sent by KALAJA sh.a. to LA PETROLIFERA ITALO ALBANESE sh.a. whereby it asked the latter to allow the unloading a shipload of gas on behalf

of GLOBAL GAZ sh.a. the contractual obligations of which would be settled by KALAJA sh.a.

- The terms offered by PIA in its bids to other undertakings

37. PIA held negotiations with other LPG importers with regard to loading-unloading and storage, with the following bids:

Bid 1

On 17 July 2009 PIA submitted to Global Gaz sh.a., DUA GAZ sh.a. and Burimi Srl a bid for LPG unloading and storing. Under the bid the customers would have to provide to the operator (PIA) an investment contribution of EUR 1,500,000 at the signing of the contract. The bid also requested a customer security to be submitted to PIA. According to PIA the security of EUR 1,500,000 was to cover the observance of the contract and settlement of every customer liability. Any security cost under the bid would be borne by the customer. Under the bid the storage fee was EUR 26,250 a month against a capacity of 4,800 m³. A fee of EUR 19.50 per tonne was asked for the unloading of gas for a quantity of 30,000 tonnes a year—the guaranteed minimum annual transaction¹—and EUR 13 per tonne for any quantity exceeding 30,000 tonnes a year. The letter from PIA indicated that its bids to operators were valid for minimum capacities of 30,000 tonnes a year.

Bid 2

On 23 July 2009 PIA submitted to Global Gaz sh.a., DUA GAZ sh.a. and Burimi Srl a bid for LPG unloading and storing. The bid requested a customer security of EUR 4,000,000 to be submitted to PIA, to cover the observance of the contract and settlement of every customer liability. At the end of each of the first four years EUR 625,000 would be reduced. After the first four years the remaining EUR 1,500,000 would be left as a final security. Any security cost under the bid would be borne by the customer. Under the bid the storage fee was EUR 46,250 a month against a capacity of 4,800 m³. A fee of EUR 19.50 per tonne was asked for the unloading of gas for a quantity of 30,000 tonnes a year—the guaranteed minimum annual transaction—and EUR 13 per tonne for any quantity exceeding 30,000 tonnes a year. The letter from PIA indicated that its bids to operators were valid for minimum capacities of 30,000 tonnes a year.

Bid 3

On 31 August 2009 PIA submitted to Global Gaz sh.a., DUA GAZ sh.a. and Burimi Srl a bid for LPG unloading and storing. The bid requested a customer security of EUR 3,000,000 to be submitted to PIA, to cover the observance of the contract and settlement of every customer liability. At the end of each of the first four years EUR 500,000 would be reduced. After the first four years the remaining EUR 1,000,000 would be left as a final security. Any security cost under the bid would be borne by the customer. Under the bid the storage fee was EUR 42,500 a month against a capacity of 4,800 m³. A fee of EUR 17.00 per

¹ The Customer would have to pay a guaranteed amount of 30,000 x EUR 19.50 on a quantity equal to 30,000 tonnes per annum. The amount was to be paid up regardless the realization of the quantity. The payments were fixed and equal monthly instalments.

tonne was asked for the unloading of gas for a quantity of 30,000 tonnes a year—the guaranteed minimum annual transaction—and EUR 12.50 per tonne for any quantity exceeding 30,000 tonnes a year. The letter from PIA indicated that its bids to operators were valid for minimum capacities of 30,000 tonnes a year.

Bid 4

On 20 January 2010 PIA submitted a bid to PRIMA GAS sh.a. for LPG unloading and storing. The bid requested a customer security of EUR 3,000,000 to be submitted to PIA, to cover the observance of the contract and settlement of every customer liability. At the end of each of the first four years EUR 500,000 would be reduced. After the first four years the remaining EUR 1,000,000 would be left as a final security. Any security cost under the bid would be borne by the customer. Under the bid the storage fee was EUR 42,500 a month against a capacity of 4,800 m³. A fee of EUR 17.00 per tonne was asked for the unloading of gas for a quantity of 30,000 tonnes a year—the guaranteed minimum annual transaction—and EUR 12.50 per tonne for any quantity exceeding 30,000 tonnes a year. The letter from PIA indicated that its bids to operators were valid for minimum capacities of 30,000 tonnes a year.

38. Based on the above, we note that, regardless the market share of the bid receivers, the annual fee charged by PIA was the same, since it set a minimum annual quantity of 30,000 tonnes LPG. Thus, the quantity of 30,000 tonnes LPG per annum is a set amount which all the other undertakings have to pay regardless whether they use the entire quota. So, operators with a market share under 22.9% of the LPG import market will incur higher costs.

39. **LPG importers** receiving coastal loading-unloading services are in the downstream of the LPG import and wholesale market, and their business is significantly affected by the manner and terms of service provision. In the period under investigation a significant increase in the concentration degree was found. Of the four undertakings which in 2009 had 76.9% of the LPG import market, in the first five months of 2010 only two of the undertakings took 77.2% of the market. These undertakings are the ones having access to the coastal terminals where the LPG loading-unloading and storage service are provided.

40. The representatives of Global Gaz sh.a. stated in the hearings that the financial security of EUR 4 million was unacceptable and unrealistic because they claimed that it would have been better to build a terminal in Durres and have cash stock to conduct their business with that amount. The building of the two spherical tanks in Porto Romano, in their submission, cost about EUR 2,500,000 inclusive of land.

41. In addition, in the handling of the case, the Competition Commission found that the operators had not been proactive during the structural changes that had occurred following Council of Ministers' Decree no. 486 of 25 July 2007 "On the barring of ships transporting oil, gas and their by-products to the Ports of Durres and Shengjin" and during the negotiations with PIA sh.a. No formal or informal complaints were submitted to the Competition Authority

with any claims of heavier financial conditions against service provision in the negotiations between the parties.

42. In conclusion, the structural changes in the liquefied petroleum gas coastal loading-unloading and storage caused a bottleneck and, as a result, they led to structural changes to the increased concentration in the LPG import market. The parties—both in the provision of their services in the coastal terminals and in the meeting of the demand—had not cooperated to reach sustainable development at reasonable economic costs.
43. LA PETROLIFERA ITALO ALBANESE sh.a., ROMANO PORT sh.a. and INTERGAZ sh.a. have not abused with their dominant position.

FOR THESE REASONS:

The Competition Commission, pursuant to Articles 24 (d), 8, 9 (1) (c), 74 (1) (a) and 80 of Law no. 9121 of 28 July 2003 “On Competition Protection”,

DECIDED:

1. To conclude the in-depth investigation of undertaking LA PETROLIFERA ITALO ALBANESE SH.A. regarding abuse of dominant position in the market of coastal loading-unloading and storage of liquefied gas.
2. To conclude the in-depth investigation of undertaking ROMANO PORT SH.A. regarding abuse of dominant position in the market of coastal loading-unloading and storage of liquefied gas.
3. To conclude the in-depth investigation of undertaking INTER GAZ SH.A. regarding abuse of dominant position in the market of coastal loading-unloading and storage of liquefied gas.
4. The Secretary General is charged with implementing this Decision.
5. This Decision shall enter into force immediately

COMPETITION COMMISSION

Servete GRUDA

(_____)
Member

Rezana KONOMI

(_____)
Member

Koço BROKA

(_____)
Member

Lindita MILO (LATI)

CHAIRPERSON