



**REPUBLIC OF ALBANIA  
COMPETITION AUTHORITY  
COMPETITION COMMISSION**

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**DECISION  
No. 221 of 11.04.2012**

**“On abuse of dominant position of the undertaking “Romano Port” in the market of loading-unloading of liquefied gas”**

Competition Commission composed of :

- Lindita MILO (LATI) Chair
- Rezana KONOMI Deputy Chair
- Servete GRUDA Member
- Koço BROKA Member
- Iva Zajmi Member

In its meeting of 11 April 2012 reviewed the case with:

**Subject matter:** The existence or not of abuse of dominant position of undertaking "Romano Port", in the market of loading-unloading and storage of liquefied petroleum gas (LPG).

**Legal basis:** Law No. 9121, of 28.07.2003 "On competition Protection", Article 8, Section 9, Article 24 letter d, Article 74, paragraph 1, letter a and Article 75, paragraph 1. Code of Administrative

**Parties under the investigation:** “Romano Port” , NIPT K516255010 and address : Porto Romano, Durrës.

**Period of investigation:** The period under investigation is determined by the Competition Commission Nr.201 decision of 20.09.2011 from 01.01.2009 until 15.09.2011.

**Competition Commission after reviewing:**

In-Depth investigation report on the market of loading and unloading of liquefied gas presented by the working group, the relation of the Secretary-General, and

The Claims of undertaking "Romano Port", given at the hearing of 21.02.2012 and the written claims submitted by its letter no. Prot 23 of 21.02.2012, (the Competition Authority protocol Nr. 107 Prot. of 28.02.2012);

### **Notes That:**

#### **I.CASE UNDER INVESTIGATION**

1. In-depth investigation is addressed to the service of loading and unloading of LPG in deposits build in Porto Romano by licensed undertakings in the market of import and trade of oil and its byproducts. This service is provided on the basis of exclusivity granted through concession agreement only by the concession to the undertaking "Romano Port".
2. Under the law Nr.9298, of 28.10.2004, "On the ratification of the concession agreement, of type" BOT "(Build, operate, transfer), for construction and use of facilities of Romano port Durres for gas and its products. Its is meant to function as an independent port service, open to all qualified operators in the oil industry and its products and provide therefore a logistics base to a very high level for all licensed operators in Albania.
3. The concessionaire also is obliged to respect the right of equality for companies that will provide services through this facility, respecting the legislation in force in this field and the concessionaire will carry through it only the activity of loading and unloading oil, liquefied gas and its products and not for other trading activities.
4. The users of the service of loading and unloading are the undertakings operating in the LPG import market, using the deposits of which are built on their property and / or taken on rental for storage capacity.
5. The Authorized State Body is an institution that is responsible for supervision and regulation of this concession.

#### **II. PROCEEDINGS**

6. The procedures followed during the investigation are based on Chapter II; Part II and Chapters II and III of Part III of the Law no. 9121, of 28.07.2003 "On competition Protection" (amended) (hereafter the Law) and the Code of Administrative Procedures.
7. "Mare Oil" undertaking filed out a complaint in the premises of Competition Authority with no. 61/1 Prot of 26.07.2011, and in the Competition Authority protocol with Nr. 326 of 26.07.2011. Through this action, this undertaking claimed that "Romano Port" was not allowing the unloading the ship in the deposits owned by this undertaking, Pretending that not all necessary documents were submitted. The Secretariat, following on its investigative procedures, on 27.07.2011, held meetings with representatives of undertaking "Mare Oil" and "Romano Port" to evaluate this complaint.
8. Competition Authority Secretariat, following on its procedures, carried out a

- monitoring on 27.07.2011 and also held meetings with representatives of "Mare Oil" undertaking and "Romano Port".
9. Based on the findings of monitoring, the Competition Commission, pursuant to Article 42 of the Law, through the Decision no. 196 of 29.07.2011 has approved the opening of proceedings of preliminary investigation in the market of loading and unloading of liquefied petroleum gas (LNG) in the geographic market of Porto Romano, Durres, to see if there are elements of competition restriction.
  10. Competition Commission, assessed that the prohibition of discharge of the ship of "Mare Oil" by "Romano Port" may constitute a risk of committing a serious irreparable infringement of competition. Competition Commission with decision no. 197 of 29.07.2011 decided to take a temporary measure. Through this decision is "Romano Port" undertaking is ordered to enable an immediate discharge of the ship with LPG of "Mare Oil" and not later than 5 (five) days from the receipt of the notification of this decision.
  11. The undertaking "Prima Gas Albania" by its letter No.PGA-AK0811, of 12.08.2011, and Competition Authority protocol Nr. Prot 355, of 12.08.2011, complained that "Romano Port", is not allowing the processing of LPG ship brought by them and that Romano port want them to deposit the LPG in its own deposits and is asking for additional documents.
  12. In the premises of ACA it has also been filed a document with No. 13/1 prot., of 13.08.2012 of the Association of Petroleum Importers, on some concerns about competition in the market of loading and unloading of LPG, in Romano port, Durres.
  13. Competition Commission, after being known with this complaint, and after organizing the hearing session, considering that this act can constitute a risk of committing a serious irreparable infringement for competition, and with the Decision no. 198, of 25.08.2011 decided, to take interim measure ordering the undertaking "Romano Port" to enable the processing of LPG brought by the ship of "Prima Gas Albania" undertaking.
  14. The Competition Authority was introduced with the Decision no. 5537/6 of 12.08.2011 by the Authorized State Body (OSHA). Based on the complaint of "Mare Oil" with Decision No. 1 of 24.08.2011, OSHA decided that "Romano Port" must ensure the immediate implementation of the legal obligation to enable the processing of the ships brought by companies licensed for LPG trading and who own or use coastal deposits in Porto Romano, which are within the required technical conditions and certified by the relevant institutions as the Central Technical Inspectorate (CTI), Police of Fire Rescue and Protection, Ministry of Environment ,Forestry and Water Management, etc..
  15. On 01.09.2011 "Mare Oil" undertaking filed a complaint numbered 181of prot, through which it asks to enable the processing of ships brought, in the deposits of its coastal area in Porto Romano., "Mare Oil" through this complaint claims that on the premises of Porto Romano on 31 August 2011 had sent a ship with LPG destined for Albanian market (with the label "Synzaura), to unload in its deposit in coastal are of Romano Port. By letter no. 76 prot, of 31.08.2011, Mare oil is informed by "Romano Port" that must sign a final standard contract form as a precondition to enable the unloading.

16. Following the procedures, Competition Commission, by Decision no. 201, of 20.09.2011 "On the opening of procedures of in-depth investigation in the market of service, loading and unloading of liquefied petroleum gas toward Romano Port ". It decided to open proceedings with in-depth investigation in the relevant market toward "Romano Port" , with the object of the existence or not of abuse of dominant position.
17. During the procedures of in-depth investigation, it has been filed two other complaints in the Competition Authority: one from undertaking "Mare Oil" with no number of protocol, of 12.10.2011 and the other by "Romano Port" JSC, of 13.10.2011. In this complaint, "Mare Oil" stated that on 12.10.2011 the undertaking has sent a ship destined for the Albanian market with LPG ("Synzaura), to unload and store in its own deposits near the port, "Romano port".  
Again On October 11<sup>th</sup> ,2011 via e-mail, "Mare Oil", notified by "Romano Port" was told to sign a standard contract form "On the rendering of services" to enable unloading of the ship. "Mare Oil" stated that it has been held some meetings with Romano port, regarding the content of this contract, but the "Romano Port" refused to take into account its suggestions, and eventually asked to Mare Oil to sign a contract-form according to its terms, but the undertaking calls it is unfounded and unjust, and seeks to enable the process of unloading of the ship brought from it.
18. Pursuant to Article 39 of the Law, Competition Commission held a hearing session on 21.2.2012 with the legal representative of "Romano Port", and took into account the claims of the undertaking under the investigation, archived to ACA protocol with No. 107 prot., of 28.02.2012.

## **II. Relevant market**

Based on Law no. 9121 of 28.07.2033 "On Competition Protection" and the Guideline no. 76, of 07.04.2008 "On defining relevant market".

Relevant market is defined in two dimensions:

- A. The relevant product market and / or service market
2. The relevant geographic market

### **II.1 Service market**

19. Service market of loading and unloading of liquefied petroleum gas (LPG) is offered on dedicated deposits in Porto Romano from undertaking "Romano Port".
20. The process of loading and unloading is offered only in two ports: Porto Romano, Durres and Vlora port 1, Vlore. This process can not be accomplished without the process of depositing of the product connected with the loading and unloading facilities. But the conditions under which this service is provided in Porto Romano from the undertaking "Romano Port", are specific, because the process of depositing is applied in the deposits that are owned by different companies that import LPG.

### **Substitution from the demand point of view**

21. Geographical area of Porto Romano, undertakings operating in the Import and wholesale trade of LPG, has the right to build deposits in their ownership, the use of which is closely linked to facilitate the process loading and unloading. These undertakings can fulfill the process of loading and unloading through "Romano Port", which is the only entity that can provide the service of loading and unloading of LPG. This exclusive right is guaranteed by the concession agreement, respectively the Law no. 9298 of 28.10.2004 "On ratification of the final concession" BOT " for construction and use of port facilities, for gas, oil and their products in the coastal area of Porto Romano / Durres" (as amended).

### **Substitution from the offer point of view**

22. "Romano Port" can not be competitive in service delivery because of its exclusive right. An exclusive right is granted to "Romano Port" for the service of loading and unloading of oil and its products in Porto Romano (in the concession contract), thereby blocking new entries in the relevant market, as long as this contract will be in effect.

## **II.2 Geographic market**

23. The geographic market includes the territory of "Porto Romano" in the area with the same name in Durres. This geographical area is separated from the others, because the deposits of LPG owned by licensed undertakings in the market of import and trading of LPG can profit from the unloading and storage service only through this port.

**Relevant market of service is the market of loading and unloading of liquefied gas in the geographic zone of Porto Romano Durres.**

## **III. Evaluation of the dominant position**

24. Pursuant to paragraph 5 of Article 3 of Law, the dominant position is the economic power of one or more undertakings which enables them to prevent effective competition in the market, making them capable of acting in terms of supply or demand, independently of the other participants in the market, such as competitors, clients or customers.
25. Assessment of dominant position of the undertaking under investigation Romano Port is made by taking into account the criterias set out in Article 8 of Law no. 9121 of 28.07.2003 "On Competition Protection", based on which:

### **III.1. Market shares**

26. Loading and unloading service in Porto Romano is offered only by "Romano Port". Thus, deposits that are built by licensed undertakings for import and wholesale trading of LPG in the Porto area can take the service of loading and unloading only "Romano Port", which therefore owns 100% of the relevant market.

### **III.2 Barriers to enter the market**

#### **III.2.1 Legal barriers**

27. The service of loading and unloading is realized from only one undertaking, "Romano Port", which operates regarding the agreement signed with the Albanian government and ratified from the Albanian Assembly, with the law no. 9298, of 11.07.2004, amended in 2006. Regarding the VKM No. 251, of 20.04.2001 there are defined the areas where coastal installations will be built respectively in Porto Romano.
28. Under the concession agreements signed by the Albanian government with this enterprise, there is a 30 year exclusive rights period of this port. Under this contract, for the timeline abovementioned there cannot be built any other ports, except for the exceptions provided in the concession agreements in terms of loading and unloading and depositing of petroleum and its products.
29. The market for service of loading and unloading of LPG, has no legal barrier to the entry.

#### **III.2.2 Economic Barriers**

30. Costs for building a new port of loading and unloading market of LPG are high, because the investment requires building up the port, necessary port infrastructure, deepening of the sea, land investments, etc.. In this kind of investments it is required a considerable investment. This is a specific feature of the markets in which technology becomes the main factor for the barrier of new competitors in the market.
31. The undertaking also must consider the cost of exit from the market, which derives due to high costs of market entry and widening of this activity, which are considered non-refundable or have a low return rate in case of sale. As it is written above the construction of new ports of oil, gas and their products which may be a potential opportunity only in cases prescribed by law, in terms of the Law "On Competition Protection", article 9, paragraph b constitute barriers to entry.

### **III.3. Countervailing buyer power**

32. Porto Romano is the only undertaking that operates in the market of loading and unloading service in Porto Romano. Having no other opportunities to receive this

service, the counteractive power of buyers, in the case of undertakings that have invested in their deposits or rent in Porto Romano is low.

33. Based on the specific terms and conditions of loading and unloading service of LPG, in Porto Romano, and parts referring to the relevant market and economic and legal barriers that exist in the market, potential competition, according to Article 8 of Law no. 9121 of 28.07.2003 "On Competition Protection" shows that the company "Romano Port" has a dominant position in market of loading and unloading service of liquefied petroleum gas at "Porto Romano".

#### **III.4. Counteraction regarding relevant market**

34. **Depositing market.** Importers of LPG only benefit from the concessionaire the service of loading and unloading. This service cannot be provided separately but only through the deposits that are connected with the unloading facility. Thus, the LPG importing undertakings have invested to build the deposits in the port area. The market of loading and unloading in Romano Port is the market which can not function separately from the LPG storage.
35. It is proved that the main shareholder (who owns over 99% of the stock) and is also executive director of the undertaking "Romano Port" holds the "blocking" packet (50%) of the undertaking 'Intergas', which performs its activity in the storage of LPG market in Port-Romano, Durres, and is the sole shareholder of the company "AV Gas", which operates in the market of import of LPG.
36. **Market of import and wholesale of Liquefied gas.** The structure of the LPG import market has had strong structural changes during the period 2009- 2011, as a result of changes in technology of loading- unloading and depositing.
37. The evaluation of the concentration ratio is calculated HHI index (Herfindahl Hirschman), which is based on market shares held by companies that operate in the import market of liquefied gas. Concentration ratio is the indicator of the undertaking market power. Two of the units that are used to measure the ratio of concentration are: Herfindahl-Hirschman (HHI) and CR3 indicator.
38. The table below presents the HHI for the period 2009, 2010 and 01 January 2009– 15 September 2011

**Table 1: Evaluation of the concentration index in the market of import of the liquefied gas**

Concentration index	2009	2010	01 January-15 September 2011
HHI <sup>1</sup>	1975.04	2870.60	2791.
CR3	65%	82%	73.7%
CR4	76.9%	87%	84.2%

39. Referring to concentration indicators we see that the HHI concentration index in 2009 is above 1800 showing a market with high ratio of concentration. While in 2010 - 15 September 2011, it is noted a substantial increase in the HHI respectively 2870.60, and 2791, passing into a market with high ratio of concentration. This increase of concentration indicator is a result of increased market shares of undertaking A & V-GAS this undertaking itself determines the high ratio of concentration for the period January to 15 September 2011 with the amount 2296, having though market power to influence the competition parameters.
40. CR3 and CR4 also appear high and increasing in 2009 compared with CR3 respectively in 82% and 73.7% compared to 2009 which is 65% and CR4 in 87% and 84.2% compared with 76.9% in the year 2009.

#### **IV. ABUSE OF DOMINANT POSITION OF THE UNDERTAKING ROMANOPORT**

##### **IV.1. Unjust conditions in offering the service of loading and unloading**

41. "Romano Port" is obliged to accept any licensed undertaking to provide service Under Article 4 of the "concession law". According to this article "Romano Port" has the obligation not to refuse to provide services without reasonable and lawful excuse.
42. The Authorized State Body (OSHA) by Decision no. 4 of 27.04.2009 has approved the "Regulation of operation of port oil refining" for undertaking "Romano Port". According to Article 1 of this Regulation, its purpose is to organize all the administrative, and legal activity of the port "Romano Port" as an opened port to international traffic and that this regulation shall be applied in this port to all undertakings (or economic operators) that transport gas, oil and other products.
43. Under the Regulation of the Port, the receiver of the goods (economic operator) to enable the unload of the goods (oil, gas, and other products), shall submit these documents to the responsible authorities:
- Document issued by the custom authorities that allows the processing of the ship;
  - Document issued by the laboratory for quality control of the products that will be refined;
  - Document from the environmental authorities for fulfillment of environmental requirements;
  - Document of payment of port service.

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<sup>1</sup> With an HHI below 1000 the market concentration can be considered low, between 1000 and 1800 as moderate and over 1800 high.



44. "Romano Port" has asked "Mare Oil" and "Prima Gas Albania" the additional documents as to enable the unload of their ships with LPG in Port "Porto Romano,":
  - Permit of use for the station of liquefied gas deposits for undertaking "Mare Oil";
  - Technical Certification conformation of shipping lines and oil deposits issued by CTI;
  - License of operation;
  - Technical check station Act
45. These documents are not mentioned in the above regulation. In this way the Romano Port undertaking decided to exceed the legal obligations by asking for additional documents, which set operators in unequal terms of trade.

#### **IV.2. Appliance of unfair conditions for same trade actions with the parties**

46. During the investigation procedure it was concluded that undertakings operating in the Import and wholesale trade of oil during the period under investigation have taken the unload service for the oil using their deposits although they have been without permission. According the data from Katundi i RI municipality and port authorities<sup>2</sup>, it results that for the period October - December 2009 Romano Port:
  - Has unloaded Kastpetrol ships for oil and gas products from 04.06.2009-24.07.2009 while usage permissions for coastal deposits of this undertaking are taken on 29.07.2009, and for coastal deposits on the outer escade on 12.08.2011.
  - Has unloaded the Europetrol undertaking ships from 20.07.2009-27.12.2009 while was given the usage permit for costal deposits for: oil terminal stations on 24.03.2011; outer escade coastal deposits on 12.08.2011; deposits of oil and its products on 24.08.2011.
47. So based on these data it is shown that "Romano Port" has not requested additional documents to undertakings that import oil and gas, as it did for undertakings operating in the Import and wholesale market of LPG. Romano Port allowed them to unload despite the fact that that they have been without usage permission in that time. Meanwhile it did not allowed to unload undertakings operating in the LPG market, with the argument that additional documents are required with the excuse of security reasons in the port.

In this way, "Romano Port" has applied unequal conditions regarding similar commercial activities with parties, despite the above-mentioned operators operate in different markets (deposit and wholesale trade of oil and LPG) facing them with disadvantage to implement efficiently their respective activities. Given that the undertaking under investigation has a dominant position in the relevant market, and being that it is vertically integrated company in depositing, wholesale import of LPG<sup>3</sup>.

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<sup>2</sup> Document no 474/1 on 21.10.2011, and document no 102 on 14/10/2011 .

<sup>3</sup>According to data from the NRC, MR. Pirro Bare is legal representative of "Romano Port", who owns 99.84% stake in this company which shows that he has the decision-making power in the General Assembly of Stakeholders in this undertaking. Mr. Pirro Bare has also 50% of market shares in undertaking "INTERGAs" . although Mr. Bare Pirro has not the majority of decision -making in the General Assembly of Shareholders, this man has most of the blocking of

### **III.3 Setting the conditions for entering into standard form contracts with companies operating in the Import and wholesale of Liquefied gas, obliging them to accept additional obligations.**

48. In August 2011, "Romano Port" has conditioned the unloading of LPG ships with the signing of a standard form contract, which imposes additional obligations on economic operators who want to unload their products in deposits that have built in the costal area.
49. Concession agreement and the Regulation for the "Port operation", provide that any economic licensed operator, (Article 36 paragraph f and Article 37) has the right to unload his goods and "Romano Port" must fulfill the request of the economic operator. This condition of the undertaking under investigation arises from legal framework and the conditions set for the service with additional requests are unsupported and not founded in the law.
50. The assessment of this contract (in some articles), results that it imposes obligations which by the law, are assigned to the concessionaire, to be passed from the concessionaire to third parties without their will. These obligations must be specifically fulfilled from the concessionaire. Concessionaire's obligations derive from the law and are obligations that are predicted in Article 673 of the Civil Code which provides that: the undertaking with dominant position in the market is obligated to contact with anyone who requires a to enter in commercial relations.
51. Article 850 of the Civil Code, which refers to the contract of undertaking, refers to a contract whereby one party (the entrepreneur) is obliged to use its tools and take on the risk, to do a job, an act or offer a service, while the other party is obliged to accept it at the price specified in the contract. Thus, obligations and potential risks are the responsibility of the concessionaire and can not be passed to third parties unless there is an expressed willingness of the parties. So, the terms of the contract in our evaluation are unfair and unfounded in law.
52. If negotiations between the concessionaire and operator to take his service resulted as unsuccessful, then the parties should be directed to OSHA, which is the regulator and supervisor of this concession. During the investigation it is concluded that "Romano Port" has not requested and not received any approval to this "standard form contract" offered to operators who are competitors in related markets in which the concessionaire has an economic interest.

In conclusion, the Competition Commission finds that the "Romano Port" undertaking has a dominant position in the market of loading and unloading of LPG during the period under investigation. This operator has repeatedly refused to perform the unloading of LPG for the operators who have invested in storage capacities owned by them presenting unreasonable and unlawful reasons. This refusal relates to the direct economic interest of this operator in the downstream market, as on depositing and wholesale trade of LPG, bringing competition restriction in these markets. The behavior

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decision-making, which means that the decisions of "INTERGAS" are conditioned by him. This shareholder also owns 100% of the market shares in A & V GAS undertaking, which carries import activity of LPG.

of "Romano-Port", is abusive, regarding the Article 9, paragraph 2, (letter "c") of the Law "On Competition Protection",

**For these reasons:**

Competition Commission in appliance of Article 24, letter "a" and "d", Article 74, paragraph "2" letter "a" and articles 69-70 of Law no. 9121 "On Competition Protection", (amended)

**Decided:**

I. "Romano Port" has committed an abuse of dominance in the market of loading and unloading of LPG in Porto Romano by;

A. placing other unfair conditions of offering the service,

B. applying unequal conditions to same trade actions of the parties, placing them at a competitive disadvantage;

C. setting conditions for entering into contracts with other parties, which must accept additional obligations, which, by their nature or according to trade practices, have nothing to do with the object of the contracts.

II. Penalties for serious violations of "Romano Port" in the amount 2.35% of total turnover of this undertaking for the year 2010 corresponding to the amount of Lek 6,735,419.

III. Requiring "Romano Port" not to restrain the loading and unloading service by creating obstacles to its behavior towards undertakings that operate in the market.

I. The closing of the in-depth investigation opened with the Decision No. 201 of 20.09.2011 of Competition Commission.

This decision shall enter into force immediately

**COMPETITION COMMISSION**

**Servete Gruda**

(\_\_\_\_\_)  
MEMBER

**Iva Zajmi**

(\_\_\_\_\_)  
MEMBER

**Koço Broka**

(\_AGAINST\_)  
MEMBER

**Rezana Konomi**

(\_\_\_\_\_)  
DEPUTY CHAIR

**Lindita Milo (Lati)**

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CHAIRPERSON