



**REPUBLIC OF ALBANIA**  
**-COMPETITION AUTHORITY-**  
**Competition Commission**

---

DECISION  
No. 345 of 12 February 2015

**On**  
**closing the in-depth investigation into the market of production, importing and wholesale selling of fuels against undertakings Kastrati SH.A, Kaspetro SH.A, Europetro Durrës Albania SH.A, Porto Romano Oil SH.A, Bolv Oil SH.A, Genklaudis SH.A, Everest Oil SH.A, Taci Oil SH.A. and Armo SH.A. and giving recommendations on the good functioning of this market**

The Competition Commission, composed of

- |                       |        |
|-----------------------|--------|
| ▪ Lindita Milo (Lati) | Chair  |
| ▪ Servete Gruda       | Member |
| ▪ Koço Broka          | Member |
| ▪ Iva Zajmi           | Member |
| ▪ Eduard Ypi          | Member |

in its meetings of 2 and 12 February 2015 reviewed the Case with:

**Subject-matter:** Review of the Report on the in-depth investigation into the fuel importing, production and wholesale selling market.

**Legal basis:** Articles 4, 8, 9 (1) and (2) (a), 24 (d) and 26 of Law No. 9121 of 28 July 2003 “On Competition Protection,” as amended, hereinafter referred to as the “Law”;  
Law 8485 of 12 May 1999, “Administrative Procedure Code”.

**Undertakings under investigation:**

- 1. Kastrati SH.A**, having TIN no. K43823006A, and address: Lagjia nr.14, Rruga Tiranë-Durrës, Shkozet;
- 2. Kastpetrol SH.A** having TIN no. J91823501N and address: Shkozet, Durrës;
- 3. Europetro Durrës Albania SH.A**, having TIN no. K24010212N, and address: Lagjia “Hoxhe”, nr.12, Krujë
- 4. Portoromano Oil SH.A** having TIN no. K61330501I and address: “Katundi i Ri”, Rruga Porto Romano, Durrës;
- 5. Bolv Oil SH.A** having TIN no. K32528408H and address: Grize, Patos, Fier
- 6. Genklaudis SH.A** having TIN no. K76911001E and address: Berdice Beltoje, Shkoder;

7. **Everest Oil SH.A** having TIN no. L21829002Q and address: Rruga: “Dëshmorët e 4 Shkurtit”, Pallati 1/1, Kati II, Tiranë;
8. **Taçi Oil International Trading & Supply SH.A** having TIN no. K31902009J and address: Rr. “Dëshmorët e 4 Shkurtit”, P.Sky Toëer, Kati IV, Tiranë;
9. **Armo SH.A**, having TIN no. K82916498D, and address: Rruga Papa Gjon Pali II, pallati nr 12, ABA Business Center, kati 8, Tiranë.

**Investigation period:** As specified in the Competition Commission Decision no. 315 of 13 May 2014, the investigation period is 1 January 2010-30 April 2014.

**After reviewing :**

- The Report on the in-depth investigation into the fuel importing, manufacturing and wholesale selling market, submitted by the Competition Authority Secretariat, and the Competition Authority Secretary-General's Report;
- The claims submitted in writing and orally by the undertakings under investigation in the hearings of 26 and 29 December 2014, and the ones submitted on 9 and 12 January 2015,

**THE COMPETITION AUTHORITY HAS FOUND:**

**I. PROCEEDINGS:**

1. Following a public concern stated on the media, the Competition Commission, with proposal from the Secretariat, and pursuant to Article 42(1) of Law no. 9121 of 28 July 2003 “On Competition Protection”, adopted Decision No. 292 of 16 September 2013 whereby it ordered an inquiry into the fuel importing, production and wholesale selling market to determine any potential competition restrictions.
2. In order to assess the impact of the structural changes and how the undertakings had reflected the changes in the 2014 Fiscal Package, the Competition Commission approved its Decision No. 304 of 27 January 2014 amending Decision No. 292 of 16 September 2013 “On opening an inquiry into the fuel importing, production and wholesale selling market”, whereby it decided to extend the investigation period to 31 January 2014.
3. The inquiry found an increased degree of market concentration and two different business models in the fuel import and wholesale market, as well as failure to reflect changes to the international fossil fuel prices in the domestic market. The Competition Commission, with proposal from the Secretariat and pursuant to Articles 24 (d) and 43 (1) of the Law, Paragraph 3 of the Regulation on the Competition Authority investigative procedures, and Article 12 of the Regulation on the functioning of the Competition Authority, adopted Decision No. 315 of 13 May 2014 whereby it ordered an in-depth investigation into the fuel importing, production and wholesale selling market against the undertakings operating in that market, specifically against: Kastrati SH.A, Kasp petrol SH.A, Europetrol Durrës Albania SH.A, Porto Romano Oil SH.A, Bolv Oil SH.A, Genklaudis SH.A, Everest Oil SH.A, Taci Oil SH.A. and Armo SH.A., in order to see whether there were any potential competition restrictions in the relevant market in line with the provisions of Articles 4 and 9 of the Law.
4. Pursuant to the Decision, the Competition Authority Secretariat carried out the investigation pursuant to the Law and the Administrative Procedure Code.
5. At the end of the investigation, the Secretariat submitted to the Competition Commission the Report on the in-depth investigation into the fuel importing, production and wholesale selling

market. Pursuant to Article 47 of the Administrative Procedure Code, the Report was made available to the undertakings under investigation.

6. Pursuant to Article 39 of the Law, the undertakings under investigation Kastrati SH.A, Kastpetrol SH.A, Europetrol Durrës Albania SH.A, Portoromano Oil SH.A, Bolv Oil SH.A and Genklaudis SH.A submitted their claims in writing and orally in the hearings organized by the Competition Commission on 26 and 29 December 2014.
7. The Authority received claims from Kastrati Sha and Kastpetrol Sha, in Letter No. 3/1 of 08.01.2015, Genkaludis Sha, in Letter No. 3/2 of 12.01.2015, Europetrol Durrës Albania Sha, in Letter No. 3/3 of 12.01.2015, and Bolv Oil Sha, in Letter No. 3/4 of 12.01.2015.

## II. RELEVANT MARKET

8. The relevant market is defined by Article 3 (7) of the Law and Instruction No. 76 of 7 June 2008 “On determining the relevant market”. The definition of the relevant market includes two dimensions: **the product market and the geographical market.**

### II.1. Relevant Product Market

9. Based on Competition Commission Decision No. 315 of 13 May 2014 “On opening an in-depth investigation into the fuel importing, production and wholesale selling market” the relevant product market includes the import, production and wholesale market for two submarkets: the submarket of *Euro diesel* and the submarket of petrol.
10. **Eurodiesel** is a high quality type of fuel that meets all the EU EN 590 parameters or standards, with sulphur content of less than 0.05%. This product is both imported to Albania and produced locally.
11. **Petrol** is an imported product, complying with the Albanian standard S SH EN 228, to be used for vehicles, and should be lead-free ( $Pb \leq 0,013g/l$ ), have an octane rating equal to or higher than 95, but less than 98.
12. The upstream market consists of fuel importing companies and Armo SH.A., which is the only company processing crude oil and selling its refined by-products.
13. The import market consists of two submarkets: the import (or rather “Import 7”) market that is organised into free customs warehouses where importers buy and sell the products as exempt from the local system of customs duties and fees, with payment of taxes (customs clearance) being made by the undertakings that buy the product at the customs warehouses and clear the product through customs to sell it in Albania; and the import (or rather “Import 4”) market where the importing undertakings bring the product into the customs warehouses and sell a portion of the product under the free customs regime and clear the rest through customs in order to continue the chain of selling the product to end-consumers.
14. Since other trade policies apply to the oil and petrol that is used in the extracting and processing industry in the Republic of Albania, this product is not substitutable with the diesel and petrol that is sold to be used by road vehicles because the price is difference due to a different tax burden. Therefore, this category of product is not included in the relevant market.
15. The best practices identified by OECD show that the fuel market competition can be assessed best in the retail market, an analysis which, in the conditions of the Albanian fuel market, has been impossible due to the fact that the market is subject to the Minister of Finance Instruction No. 17/2008, which is covered in more detail in the section on the impact that laws and regulations have on the competition in the relevant market.

16. For these reasons, the analysis under the in-depth investigation focused on the upstream market, including imports, production and wholesale of *Eurodiesel* and petrol.

## ***II.2. Geographic Market***

17. The undertakings under investigation operate in the entire territory of the Republic of Albania, which means that the relevant geographic market will be the domestic market of the Republic of Albania. The free customs zone<sup>1</sup>, too, is part of the territory of the Republic of Albania and, therefore, includes all the undertakings operating in it. In Albania, the fuel may be bought and sold in the free customs zone or after it is subjected to the trade policy, i.e. after it is cleared through customs.

## **III. CHARACTERISTICS OF THE MARKET UNDER INVESTIGATION**

### **III.1. Market structure**

18. In the context of analysing the fuel market and undertaking behaviour in that market, the analysis will be made for the following submarkets:

#### ***Production market – Refinery (domestic production)***

19. During the period under investigation—January 2010-April 2014—the only oil Refinery in the country has produced and marketed diesel in the domestic road vehicle fuel market in compliance with the statutory standards. The Refinery diesel production in that period and total sales in the domestic market accounted for 17.5% of the market (the highest share) in 2011, falling to 4.1% of the market in 2013 (the lowest share). Because of this small market share no analysis was carried out for this submarket.

#### ***Import market***

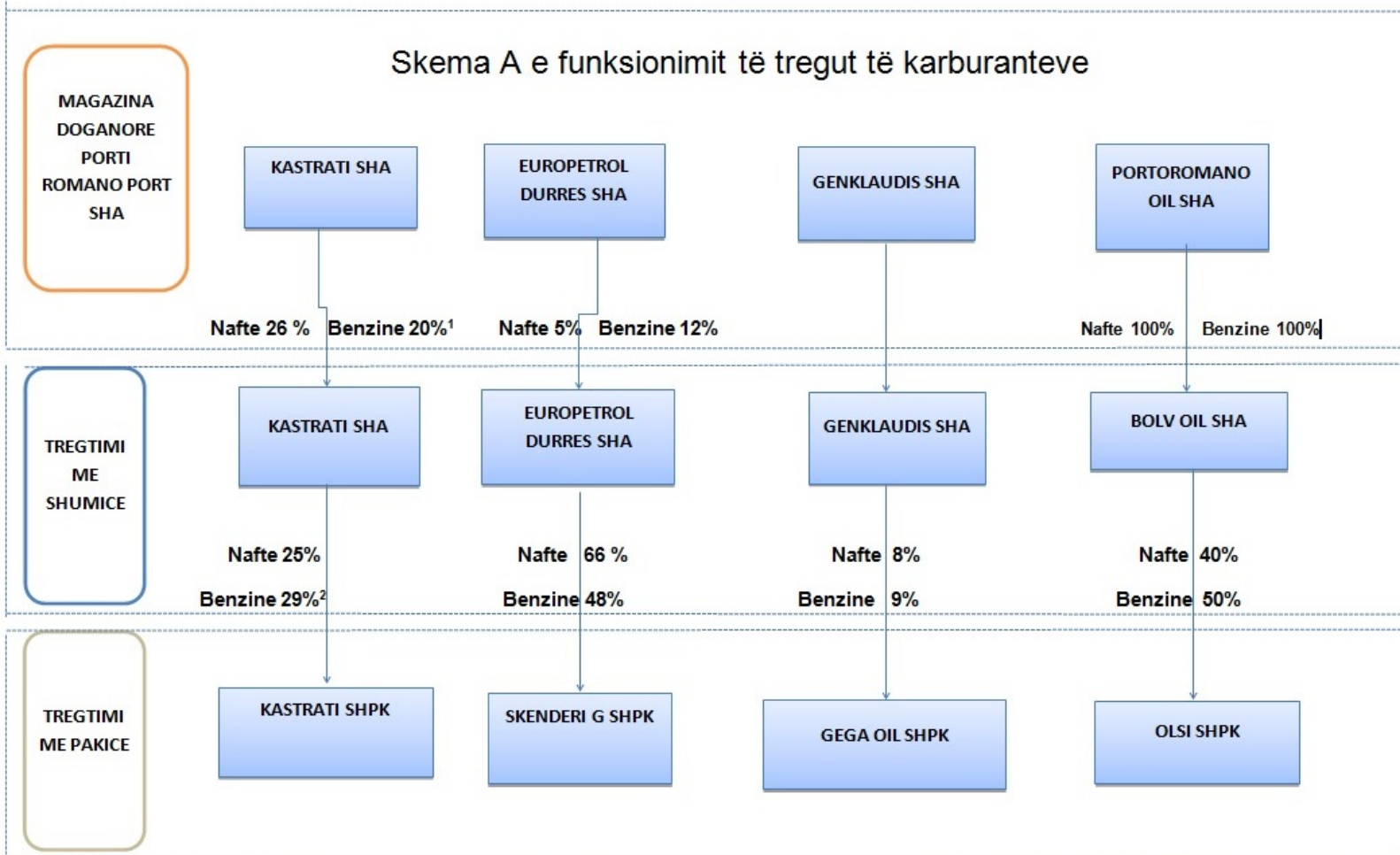
### **III.2.1. Market models**

20. The fuel import market is structured under two models, which have been applied in two different ports: the model of organization and functioning of Porto Romano in Durres (Model A) and the model of functioning of the Port of Vlora 1 (Model B). These two models are shown in Graph 1 “Scheme A of market functioning”, below:

---

<sup>1</sup> Article 3 of Law No. 8449 of 27 January 1999 “The Customs Code of the Republic of Albania” provides that “The customs territory shall include the land territory, territorial water bodies, inland waterways and the air space of the Republic of Albania.” Article 183 defines that “Free zones and bonded warehouses are areas in the Republic of Albania customs territory or facilities situated in this territory, which are separated from the rest of the customs territory.”

## Skema A e funksionimit të tregut të karburanteve

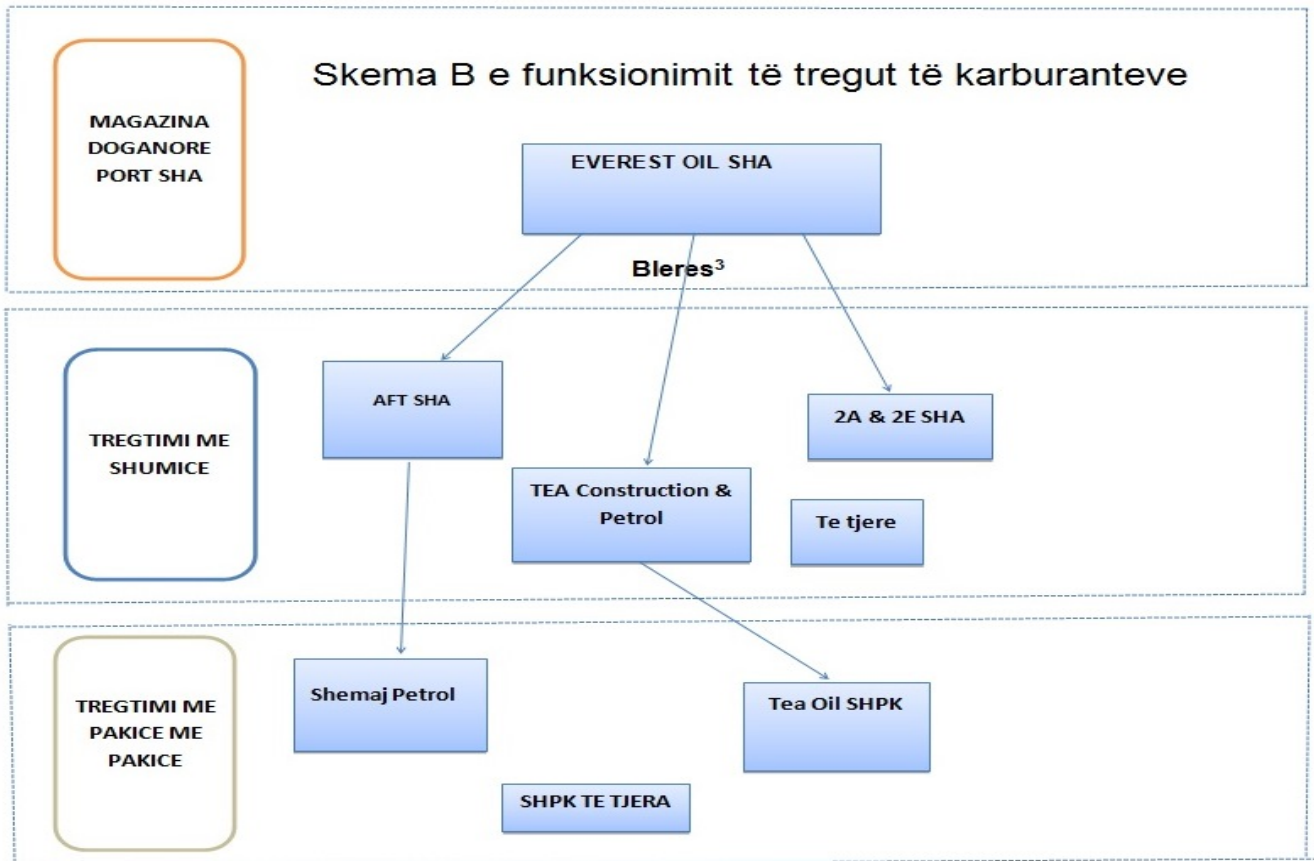


<sup>1</sup> Shenim 1- Sasia e karburanteve të shitura brenda grupit Kastrati brenda zones së lire doganore në raport me sasine totale të karburantit të importuar, në këtë nivel tregu për vitin 2013. Pjesa tjetër i shitet ndermarrjeve të tjera.

<sup>2</sup> Sasia e karburantit të shitur nga ndermarrja SHA drejt Agjentit të vet SHPK, në raport me sasine totale të importuar për vitin 2013.

21. As can be noted from the graph above, under Model A fuel importers bring the product to the respective free customs warehouses, which are located in Porto Romano Port, and sell a portion of the imported quantity under the free customs regime, with the rest being cleared through customs<sup>2</sup> by themselves, to continue with the chain of selling the product to end consumers. The respective portion of imports that is cleared through customs by the operators of the free customs zones themselves to be sold later in the domestic market is shown by the figures next to the vertical arrows. Thus, for instance, Kastrati SH.A. sells 74% of its imported diesel in the free customs zone to other undertakings operating in the same market.
22. The data on Model A are from 2013. In 2011-2012, in both the import (customs warehouse) segment and the wholesale segment one of the shareholders in Kastrati SH.A. owns Kastpetrol SH.A. the market share of which was 0 in 2013.
23. Model B of the fuel import market organisation is shown in the following graph in which Everest Oil SH.A. operates in the free customs zone of Port of Vlora 1 and was found not to have a network of its own in the rest of links of the fuel selling chain.
24. Based on NRC data, one of the shareholders of Everest Oil SH.A.—Surperba Srl—is a member of the PIR (La Petrolifera Italo-Rumena) Group, which owns 94% of the shares in La

Petrolifera Italo-Albanese SH.A. This fact was also communicated to the Ministry of Industry and Energy.



<sup>3</sup> Ndermarrja Everest Oil operon vetem ne kete nivel tregu, dhe klientet kryesore te saj jane paraqitur ne nivelin e shumices (Tea Oil, Aft, etj).

25. So, Everest Oil SH.A. buys and sells the product as exempt from the local system of customs duties and fees, with payment of taxes (customs clearance) being made by the undertaking that buys the product at the customs warehouses and clears it through customs to sell it in the domestic market.
26. When the clearing through customs is done, the tax burden on fuel is linked to the daily prices of the Platz Exchange. Where the invoice price is below the Platz price on the data of customs clearance, then the reference price will be the Platz price plus USD 30; where the invoice price is higher than Platz, the tax burden will be calculated on the basis of the invoice price.
27. After the product is cleared through customs by a wholesaler, the next transaction will be the selling to retailers, who also own the points of sale to end consumers. The invoice price at the pump for which it is sold to retailers is the final price, i.e. the price that is charged to end customers.
28. In these conditions, the domestic market is directly related to the daily prices of the PLATZ exchange in terms of supply sources, but this behaviour is not reflected in the final retail prices, which have been affected by the phenomenon of solidification and, thus, do not reflect purchase costs.

### III.2.2 Import market structure by either product

29. The in-depth investigation report shows detailed data on the undertakings and their respective market shares, calculated on the basis of the quantity of diesel and petrol sold at the free customs warehouses and the quantity of diesel and petrol produced in the Albanian market in January 2010-April 2014 (excluding the quantity of fuel exported by those undertakings to other countries).
30. The assessment of market shares found that Kastrati SH.A. market share increased from 38% in 2010 (together with Kastpetrol SH.A.) to 46.3% in 2013 in the *Eurodiesel* import market and about 36.8% in the petrol import market. Its closest competitor is Everest Oil SH.A, which in 2012 had 4.5% of the *Eurodiesel* import market and 15.9% of the petrol import market, and in 2013 reached 23.8% and 38.4%, respectively. Europetrol SH.A. lost its market share from 34.8% in 2010 to 16.6% in 2013 in the *Eurodiesel* market and from 37.7% in 2010 to 23.5% in 2013 in the petrol market. Taci Oil SH.A. held 31.5% in 2012 and 8% in 2013 in the *Eurodiesel* market and 24.6% in 2012 and 1.3% in 2013 in the petrol market.
31. Kastrati SH.A was found to sell most of the fuel in the free customs zone also in January-April 2014, a period when its market position increased significantly. Thus, the data submitted by that undertaking show that the portion of diesel it sells in the free customs zone was about 74% of the total imported quantity and 80% of the total imported petrol.
32. The local producer—ARMO SH.A.—held moderate shares in the domestic fuel wholesale market in the period under investigation, with 2011 being its best year at 17.5% of the domestic market.
33. During the period under investigation the CR 3, CR 4 and CR 5 concentration indicators increased, which shows a very high of concentration in the import market, including the local refinery. Thus, the concentration indicators for the *Eurodiesel* import market in 2013 were: CR3-86.7% and CR4-97.4%; while in the petrol product market is even more concentrated: CR3-98.7%.
34. The submitted data lead to the conclusion that the market shares of the undertakings had different dynamics, resulting in increased concentration in that market segment under investigation.

### III.2.3 Wholesale market structure

35. Operators in the wholesale market include both undertakings that import the product themselves and undertakings that do not import the product but buy it at the free customs warehouses. Since those undertakings buy the product in free customs zones, the excise duty and other taxes, such as VAT, are paid during the purchase transaction by them.
36. Based on the data submitted in the in-depth investigation report the number of active undertakings operating in the wholesale market is increasing, unlike the upstream market, where the number of undertakings importing from foreign markets and trading in the free customs zone is small.
37. The data show that the degree of concentration in the *Eurodiesel* wholesale market is average. The concentration indicator in 2010 was CR3-54% and in 2013 CR3-61%. Also in the petrol wholesale market the same level of concentration was identified, with CR3-51% in 2010 and CR3-61% in 2013.
38. In addition to Kastrati SH.A, Europetrol SH.A and Genklaudis SH.A, which represent CR3, during the period under investigation other undertakings increased their market shares, e.g. Tea Construction&Petrol SH.A with 9% in 2013 and 2A&2E Total SH.A with 9.2% in January-April 2014. Also new entrants in the market, such as AFT-SHA held 6% in 2013. In addition,

the investigation found that certain undertakings showed significant increases only in one year, such as Taci Oil SHA with 14.9% and Tot-Trading in oil&transport with 8.3% in 2012.

39. In addition, some of the undertakings that hold smaller market shares buy only in the free customs zone. In January-April 2014, two undertakings did import, but that import was carried out as a joint purchase together with the more powerful undertakings in the market. More specifically, Genkaludis SH.A and Portoromano Oil SH.A. imported diesel and petrol in the same ships as Kastrati SH.A and Europetrol Durrës SH.A.<sup>3</sup>
40. The structures established in the fuel market have also identified a category of undertakings that can be classified as wholesalers. They carry on most of their business by buying and selling fuel as wholesalers, and not by importing<sup>4</sup>. Thus, Everest Oil SH.A. buys fuel from ENI S.P.A. and sells it to other wholesalers in the free customs zone (therefore, the entire transaction occurs in the free customs zone). Meanwhile, most of the business of Genkludis SH.A. and Portoromano Oil SH.A. is to buy in the free customs zone and sell directly to other retailers, mainly to their retailers, because these are undertakings with vertical market integration.
41. Wholesalers in the port of Romano Port SH.A. mainly purchase fuel from importers, including Kastrati SH.A, Europetrol SH.A, and from the wholesaler operating in the free customs zone of the Port of Vlora 1, which is Everest Oil SH.A.

#### **III.2.4 Retail market**

42. The retail market of *Eurodiesel* and petrol consists of retail petrol stations (white points of sale), which during the period under investigation were about 1,260, of which 960 were not related to the wholesale undertakings in terms of ownership, and 300 stations were vertically integrated with fuel wholesalers.
43. Kastrat SH.A, Europetrol Durrës SH.A, Bolv Oil SH.A, Genkludis SH.A were vertically integrated with retailers that had a number of stations, specifically: Europetrol SH.A vertically integrated with Skenderi G Sh.p.k, had about 48 retail stations; Kastrati SH.A vertically integrated with Kastrati Sh.p.k, had about 70 retail stations; Bolv Oil SH.A vertically integrated with Olsi Sh.p.k, had about 48 retail stations; Genkludis SH.A vertically integrated with Gega Center Sh.p.k, had about 7 retail stations.
44. The data show that Kastrati SH.A. sells to its vertically integrated undertaking Kastrati Sh.p.k. operating in the retail market about 26% of the quantity of diesel cleared through customs and 29% of petrol. The rest of the fuel cleared through customs is sold to independent points of sale. Europetrol SH.A sells 66% of its diesel and 48% of petrol that is cleared through customs to the vertically integrated undertaking Skenderi G. The rest of the product goes to independent points of sale, which sell it to end consumers. Genkludis SH.A sold to its vertically integrated undertaking 8% of the diesel and 9% of the petrol in 2013. It sold most of the product to independent points of sale. Bolv Oil SH.A sells about 40% of the diesel and 50% of the petrol to the vertically integrated undertaking Olsi Sh.p.k.
45. So, an analysis of the structure of the submarkets under investigation shows that the main market operators Kastrati SH.A, Europetrol Durrës SH.A, Genkludis SH.A, Bolv Oil SH.A and Porto Romano Oil SH.A were integrated in all the levels of fuel market during the period under

---

<sup>3</sup> Source: Letter No. 259/2 of 11.06.2014 from Romano Port Sha

<sup>4</sup> Except for undertakings Kastrati Sha, Europetrol Sha, Everest Oil Sha, Taçi Oil Sha for 2013 the rest of the undertakings bought diesel and petrol in the free customs zone, i.e. in the Albanian territory, from the four abovementioned undertakings.



investigation. However, most of the product in the relevant market is sold through independent points of retail.

46. A legal assessment of the impact of acts on the competition showed that the independent retail points, which sell most of the relevant product to end consumers, could not, during the investigation period, exercise any countervailing customer power in the wholesale market as a result of the effects of Ministry of Finance Instruction 17/2018. The applied commissions varied by the area, but did not enable a full analysis of the end price.

### **III.3. LEGAL ASSESSMENT OF POTENTIAL COMPETITION RESTRICTIONS:**

47. The investigation identified the effects of Ministry of Finance Instruction No. 17 of 15 May 2008 On Added Value Tax, which specified that retailers had the role of agent and representative in the retail process on behalf of the wholesaler, and did not consider a retailer as the owner of the product even after buying it from a wholesaler.
48. The Competition Commission took Decision No. 118 of 29 May 2009 “Recommendations on the laws and regulations affecting the level of wholesale of fuel” proposed an amendment to Minister of Finance Instruction No. 17 of 13 May 2008 on VAT, because that act specified the resale price maintenance (RPM) is a practice that restricts competition especially vertically because for tax administration purposes (VAT is collected at the main supplier) the competition impact is eliminated in the downstream segments (the retail market and end buyers).
49. On 30 January 2015 the Minister of Finance issued Instruction No. 6 on Value Added Tax, an instruction that was based on Article 102 (4) of the Constitution of the Republic of Albania and Law No. 92/2014 of 24 July 2014 “On Value Added Tax in the Republic of Albania”.
50. The investigation identified that the incorrect application of Instruction No. 17 prevented competition among the respective logos as claimed by the wholesalers. In addition, the investigation found that the commissions that wholesalers charged to retailers forced the latter to continue operating in the condition of inefficiency.

### **III.4. Legal and Economic Barriers**

51. In the Albanian legislation there are no restrictions on the establishment of an undertaking operating in the fuel importing and wholesale market. Therefore, there are no administrative restrictions or barriers to market entry for new operators provided for in the Albanian legislation. Given that Albania is not connected to a fuel pipeline, almost all the importing of fuel is done by sea shipping, since this mode of transportation has significant advantages in terms of cost compared with the road transportation. The requirements for holding statutory fuel reserves and minimum stocking capacity are barriers set by law to prevent new market entries.
52. Significant investments in the system of product storing and transportation also require significant amounts of capital, which makes it difficult to enter the market of fuel import and wholesale. Smaller operators in the fuel importing and wholesale market face requirements for significant investments to which they have to adjust themselves. In order to make imports through these ports, the undertakings are required to invest in storage facilities in their ownership or rented in the Romano Port, or rented from the port, as is the case of the Port of Vlora 1.
53. The existence of some joint purchases by the undertakings under investigations in the import market is an indication of their efforts for achieving the economies of scale in a small economy. The joint purchases are considered as a communication possibility that might represent signs of concerted behaviour among competitors. Concerted behaviour may be considered violation of free and effective competition if direct or indirect evidence is found.

54. Undertakings operating in the wholesale market may not operate in the retail market, but have to establish other limited liability companies. This is a statutory restriction that creates many links that do not add any value, from the point of import to the sale of the product to end consumers.

## ***VI. ASSESSMENT OF THE BEHAVIOUR OF THE UNDERTAKINGS UNDER INSTIGATION***

55. Pursuant to Decision No. 315 of 13 May 2014 on opening an in-depth investigation into the fuel importing, manufacturing and wholesale selling market, the investigative proceedings were carried out along both lines of investigation provided for in the Law: potential existence of a prohibited agreement (Article 4), or abuse of a dominant position (Article 9).

56. The Competition Authority conducted dawn raids at the same time and day in the undertakings under investigation to find any direct and indirect evidence of potential collusion among the competitors; however, no direct or indirect proof or evidence was found in the inspections.

57. Given that the inspections did not find any direct evidence of communication among competitors based on OECD Methodology<sup>5</sup> economic analyses were carried out in order to identify any potentially concerted behaviour among competitors within the meaning of Article 3 (4) of the Law which can be manifested in the form of collective dominance of the undertakings under investigation with a potentially restrictive impact on competition.

58. Through the inspections and its requests for information the Authority received the data and information needed for the investigation in order to make an analysis of the economic data to see whether there was any collective dominance of the undertakings under investigation in the relevant market.

59. In order to prove the collective dominance, the European law has made an assessment on a case-by-case basis, and in all reviewed cases it has been noted that the following three criteria must be met in order to prove a collective dominant position: (i) comparable market shares among the undertakings in the relevant market during the period under investigation; (ii) sustainability in the respective market shares and entry barriers to new market entrants; and (iii) market transparency and existence of a mechanism of “revenge” among competitors.

60. In reference to the market share data included in the in-depth investigation report and described in Paragraphs 29, 36 and 37, above, during the investigation period the undertakings under investigation had non-comparable market shares in both submarkets: import and wholesale markets for both products.

61. With reference to the findings of the in-depth investigation, the undertakings experienced different dynamics in terms of their respective market shares in the period under investigation, and various market entries and exits were identified in both submarkets.

62. With reference to the data on wholesale prices, parallel price changes were found among the undertakings under investigation under investigation for the *Eurodiesel* and petrol products. The investigation found that in 2013 in this market oligopolistic structures were in place (a few wholesalers) and an analysis of their behaviour was carried out on the basis of theories on undertaking behaviour in such a structure.

63. Under the definition of the relevant market, fuel for vehicles is a homogenous product with little possibility of innovation and added value incremented by the undertaking in terms of increased product or service quality in end stations. This happens because the product does not go

---

<sup>5</sup> [www.oecd.org/competition/CompetitionInRoadFuel.pdf](http://www.oecd.org/competition/CompetitionInRoadFuel.pdf)

through any technological changes, but is sold from one link in the market chain to another. In such conditions, the end retail prices of the undertakings and their logos are two criteria of competition or concerted behaviour. In addition, as already explained above, due to the high degree of market transparency, the undertakings under investigation were able to monitor each other's price change trends, with no need for punishing any undertakings deviating from the oligopoly prices.

60. A comparison between the monthly CIF fuel prices exclusive of taxes and retail prices exclusive of taxes applied by the undertakings under investigation in 2013 and the respective gross margins, for both products, identifies small differences in the retail prices and small difference in the CIF prices of purchased fuel which did not result in same amounts in terms of gross margins for those undertakings. In addition, there is a low average elasticity of retail prices vis-à-vis changes in CIF purchase prices, especially when the latter fell.
61. A solidification of the retail market was found during the period under investigation. This is a vertical restriction of competition, resulting from Instruction No. 17/2008, which specified that wholesalers (main sellers) would set the prices for retailers (agents). Because of this it was not possible to measure the impact of each segment—import, wholesale and retail—on the final prices for *Eurodiesel* and petrol that are offered to end consumers.
62. The analysed collected data show that the undertakings under investigation have a quite concentrated structure in the import and wholesale market, with entry barriers due to the financial capacity that new market entrants should have.
63. The large differences among market shares and the non-comparable market structures among the undertakings, the market entries and exists in the period from January 2010 to April 2014, and the existence of two models in the import market where different competitors operate do not comprise sufficient evidence that would justify an argument for joint dominance of several undertakings operating in the relevant market in the investigation period.
64. The joint purchases carried out during the period under investigation are mutual transactions with the purpose of fuel supply and use of the same logistics by the competitors, which is a type of behaviour that falls under Article 5 of the Law. Pursuant to that Article, these are agreements that may be excluded and must be notified to the Competition Authority in order to be excluded.

**In conclusion:**

65. After reviewing the in-depth investigation report and the claims that the parties submitted in the hearings, the Authority did not find any evidence during the period under investigation that would prove the existence of a prohibited agreement or abuse of collective dominance among the undertakings under investigation. Although competition in the fuel import and wholesale market is not effective enough due to the market structures and the legal (the Law on Hydrocarbons) and sublegal (the Ministry of Finance and Ministry of Energy instructions) framework on this market.
66. The Competition Authority investigation found that there were excessive links in the market structural chain that did not justify any added value from imports, free customs zones, wholesale, retail and end consumers, thus artificially increasing costs and reducing the average elasticity of prices.
67. The high degree of market concentration and the increasing trend of that concentration, especially in the import market, requires market structural improvements and a combination of tools beyond the tools available to the Competition Authority, in order to help with the control of

abuse and with preventing undertakings with market power from applying abusive practices that harm end consumers.

**FOR THESE REASONS:**

The Competition Commission, pursuant to Articles 24 (d) and (f), 61 and 70 (2) of Law no. 9121 of 28 July 2003 “On Competition Protection,” as amended:

**HAS DECIDED TO:**

- I. Recommend that the Albanian Government, the Ministry of Industry and Energy and the Ministry of Economic Development, Trade and Entrepreneurship
  - 1) Revise Law no. 8450 of 24 February 1999<sup>6</sup> “On processing, transportation and trading of oil, gas and their by-products”, in order to enable the undertakings operating in the *Eurodiesel* and petrol wholesale market to:
    - a) also sell as retailers, thus eliminating the excessive links in the market chain, which would result in the reduction of unnecessary economic costs relative to the added value of the product;
    - b) maintain their product identity and compete through their respective logos in the retail segment, which would encourage effective competition in the market;
  - 2) Establish the required legal basis and administrative infrastructure for a hydrocarbon price transparency unit<sup>7</sup> to which undertakings operating in the production, import and wholesale of fuels must submit a notification in real time within five to 15 minutes, including a notification to the Competition Authority, for any changes to wholesale prices;
  - 3) Evaluate the implementation of the concessionary agreement on the Port of Vlora 1, in order to verify compliance with the obligation of the concessionary not be involved in the selling of fuel, and the transfer of the exclusive right to related markets;
  - 4) Establish instruments to control frequent entries and exits within one financial year of undertakings operating in the fuel wholesale market, which generates unfair competition.
- II. Have the undertakings operating in the hydrocarbon market submit to the Competition Authority their agreements on joint imports or use of logistics, for evaluation purposes, in order to receive individual exemption of those agreements under Article 5 of the Law.
- III. Conclude the in-depth investigation into the fuel importing and wholesale selling market, against undertakings: Kastrati SH.A, Kaspetroil SH.A, Europetroil Durrës Albania SH.A, Porto Romano Oil SH.A, Bolv Oil SH.A, Genklaudis SH.A, Everest Oil SH.A, Taçi Oil SH.A and Armo SH.A.

---

<sup>6</sup> The Law is amended by Law No. 9128 of 8 April 2004, Law No. 9574 of 3 May 2006, and Law No. 9595 of 27 July 2006.

<sup>7</sup> This recommendation is based on the best practices in the fuel market such as the case of market regulation in Germany (2013).

- IV. Pursuant to Article 28 of the Law, the Competition Authority Secretariat shall monitor the behaviour of the undertakings in the market and constantly analyse the impact that laws and regulations have on the development of free and effective competition in this market.
- V. Pursuant to Article 40 of the Law, this Decision may be appealed against with Tirana District Court within 30 days of its notification.
- VI. The Secretary General shall notify this Decision to the parties under investigation.

This Decision shall enter into force immediately.

**COMPETITION COMMISSION**

**Servete GRUDA**  
(\_\_\_\_\_)  
**Member**

**Koço BROKA**  
(\_\_\_\_\_)  
**Member**

**Iva ZAJMI**  
(\_\_\_\_\_)  
**Member**

**Eduard YPI**  
(\_\_\_\_\_)  
**Member**

**Lindita MILO (LATI)**  
\_\_\_\_\_  
**CHAIRPERSON**