



REPUBLIC OF ALBANIA
-COMPETITION AUTHORITY -
Competition Commission

No.____ Prot.

Dated : 15/ 05 / 2009

DECISION

No. 111, dated 15.05.2009

“On

“the authorization of the concentration realized through the sale-purchase transaction of 76% of the shares of OSSH sh.a., owned by the Ministry of Economy, Trade and Energy to the company CEZ a.s.”

The Competition Authority, in its meeting held on 15.05.2009, with the participation of:

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

Discussed the following issue :

Subject: The authorization of the concentration realized through the sale-purchase transaction of 76% of the shares of OSSH sh.a., owned by the Ministry of Economy, Trade and Energy to the company CEZ a.s.

Legal basis : Article 24, letter “d”, Articles 10-12, in particular Chapter III „Concentrations of undertakings“, Articles 53-56, 58 of Law No. 9121, dated 28.07.2003, titled “On the Protection of Competition”; the Regulation „On the implementation of procedures for the concentrations of undertakings“; the Guideline „On the form of notification of the concentrations and the option for a simplified form of notification“; and the „Form on the notification of concentrations“.

The Competition Commission, after reviewing the report on the realized concentration [acquisition of control] submitted by CEZ a.s. company at the company OSSH, through the purchase of 76% of the shares of the latter, and the report presented by the Secretary General of the Competition Authority,

NOTED THAT:

I. The transaction and the concentration

The transaction consisting on the purchase of 76% of the shares of OSSH sh.a. by the company CEZ a.s., is realized through the "Share Purchase Agreement" dated 11 March 2009, and signed by the Ministry of Economy, Trade and Energy, (Mete) and the company CEZ a.s.

The agreement dated 11 March 2009 concerning the concentration, in accordance with conditions laid down in Article 4 of contract entered between the parties was approved by the Albanian Parliament on 23 April 2009.

The realized transaction was notified to the Competition Authority through note verbal No. 133 Prot, dated 18 March 2009, within the legal deadline set in Article 12 paragraph 2 of the law "On protection of competition."

The announced transaction is presented as acquisition of direct control, where direct OSSH sh.a. will be controlled by the majority shareholder CEZ a.s., as the owner of 76% share capital with voting rights. The Minister of Economy, Trade and Energy, as a representative of the Albanian State will own 24% of the shares.

The transaction is performed in accordance with the Law No. 8306, dated 14.03.1998 "On the strategy for the privatization of sectors of particular importance"; Law No. 9889, dated 20.03.2008 "On determining the shape and structure of privatization formula for the joint stock company named "Distribution System Operator", and the Decision of the Council of Ministers No. 835, dated 11 June 2008.

The transaction realized between the participating parties, in the meaning of Article 10/1/b and 10/2 of Law No. 9121, dated 28.07.2003, titled "On the Protection of Competition", as amended, results in acquisition of sole control.

The Competition Authority has conducted a general investigation in the energy sector and, upon its conclusion, has adopted the Commission Decision Nr. 90, dated 07.10.2008 "On some recommendations for liberalization and increased competition in the electrical energy sector." Through this decision, the Competition Commission has recommended to OSSH sh.a. "...that in every case, it should provide network access to all customers in accordance with the rules of the behavior of operators with significant market power and to take all measures to meet the obligations of the contracts for the purchase of electrical energy, entered into with small producers. "

II. Parties in the transaction

- a. The Ministry of Economy, Trade and Energy (METE) is the sole shareholder, owning 100% of the capital and, at the same time, is the **seller** of 76% of the shareholders capital and voting rights at the company Operator of Distribution System (OSSH sh.a.), in its quality of seller. OSSH sh.a. is a company with 100% state-owned capital, founded and functioning in accordance with the legislation in the Republic of Albania, Reg. No. K72410014H, with headquarters in Tirana, at the following address: "Blloku Vasil Shanto", Tirana. OSSH sh.a. is part of the Electro-energy

System in Albania, created in the year 1957. OSSH sh.a. is the only public operator that operates in the domestic market of distribution of electrical energy.

- b. The company CEZ a.s., in the quality of **buyer**, is a joint-stock company, founded and functioning in accordance with the legislation in the Czech Republic, with headquarters in Prague, at the following address: 4, Duhova 2/1444, 14053, Prague, Czech Republic. The company is registered with the Commercial Register of the District Court of Prague, and has a file No. 1581 “CEZ a.s”¹.

The company CEZ a.s., is the biggest producer of electrical energy in the Czech Republic. It was founded in 1992 by the National Property Fund and is the mother and main company of CEZ a.s. Group. The CEZ a.s. Group was created in 2003 from the merger of ČEZ, a. s. with other five Czech regional distribution companies.

III. The turnover of the undertakings

- a. The turnover in the international market, realized by the company CEZ a.s.², is xxxxxxxx CZK³ = xxxxxxxx Lek; and,
b. The turnover in the domestic market, realized by the company OSSH sh.a.⁴, is xxxxxxxx Lek.

IV. The relevant market

In accordance with the regulations and guidelines for the concentrations and according to the type of activities performed by the parties participating in the transaction, the relevant product market will be defined as:

- (i) distribution of electrical energy ;
- (ii) (ii) the supply / sale of electrical energy.

V.2. *Relevant geographic market:* To evaluate this transaction and the effects that it will produce in the market, as *relevant geographic market* will be considered the internal market / the territory of the Republic of Albania.

The distribution system is divided into 10 regional service centers, which supply energy at low and medium voltage and in 5 areas supply energy at high voltage. The majority of the areas are divided into four and five agencies. The number of agencies amounts to 39.

¹ Source: Extract from the Commercial Register for CEZ a.s. company, dated 17.03.2009, and the Simplified Notification Concentration Form.

² Source: Financial statements for the year 2008, as audited and resulting in the Report of Independent Auditors.

³ Source: Internet page www.xe.com , 1 CZK =4.93 Lek.

⁴ Source: Financial statements for the year 2008.

Although the parties participating in the concentration focus their activities at the same level of market for the supply and distribution of electrical energy, we note that in the domestic market, only OSSH is operating presently.

V. Consumer protection and the legal framework

Activities in the electrical energy sector are regulated by Law no. 9072, dated 22.5.2003 "On the electrical energy sector", as amended, which defines the rights and duties of juridical and physical persons, the public administration involved in this sector, as well as the procedures for selecting and developing a market model and the rules of its functioning.

The regulatory institution of the electricity sector which operates under the aforementioned law, is Regulatory Entity of Electricity Sector (ERE), which among other things, defines and regulates the wholesale and retail tariffs, the terms and conditions of service of electricity supply, proposed by the licensees and reviews them in accordance with circumstances; ensures that investment programs and electricity purchase contracts are consistent with the principles of planning and with the lowest cost; protects the interests of consumers regarding the electricity tariff, ensuring that these tariffs are in line with the tariff setting principles; preserves the balance between the interests of consumers, the state, investors and other participants in the electrical energy sector; promotes competition in the electrical energy sector; checks if the licensees, that offers electricity service to consumers, is in compliance with the conditions of the contract or is providing services according to standards established in the license or any regulation adopted by the ERE etc..

All the agreements in the unregulated market⁵ are subject to being monitored by ERE, in order to ensure the proper functioning of the market, as well as to ensure that the participants to the market do not hold any dominant position or engage in unfair commercial practice.

ERE has decided that the period 1 January-31 December 2009 shall be a transitory period, during which there will not be any changes in current tariffs⁶, which are determined through its Decision No. 31, dated 14 February 2008. In this way, the investor is given the chance to evaluate the situation in the OSSH and to prepare the application for tariff review, no later than the date 30 September 2009. The new tariffs

⁵ Based on Article 4.13, "The Albanian market model", the unregulated agreements are defined as follows:

- Between Qualified Suppliers and Qualified Clients;
- Between PVEs (Small producer of electrical energy, connected to the distribution system), PPEs (Independent producer of electrical energy, connected to the transmission system), Qualified Suppliers and Traders;
- Between the Wholesale Public Supplier, , PPEs, PVEs, Qualified Suppliers and Traders;
- Between the OSSH and Traders, Qualified Suppliers, PPEs, PVEs, for the energy necessary to cover losses in the distribution system.

⁶ Source: The regulatory declaration, approved on 03.03.2009.

shall become effective from 1 January 2010. The subsequent revisions shall occur within a time lag of 3 to 5 years.

V. The evaluation of competition

The company OSSH sh.a. enjoys a monopoly position in the market of distribution and supply with electrical energy, and this transaction does not cause any changes in the market structure, but only does impact the manner of operation, from a state monopoly to a private investor.

The market of distribution and supply with electrical energy is regulated and is under the supervision of the Regulatory Entity for Electrical Energy, which has the authority to approve tariffs and the methodologies for the calculation of prices for the end consumers.⁷

Based on Article 69 of Law No. 9121, dated 28.07.2003, titled “On the Protection of Competition”, as amended, and pursuant to the Memorandum of Understanding with the Competition Authority, the Regulatory Entity for Electrical Energy must require the assessment of legislation from the Competition Authority, before the approval of the methodologies for tariff setting and other regulatory acts issued by it, and that may impact the relevant market.

Based on Article 56, paragraph 1, of Law No. 9121, dated 28.07.2003, titled “On the Protection of Competition”, the Competition Authority has evaluated the impact that this concentration may bring in the market, if there would be signs of creation or strengthening of dominant market position.

As a conclusion, the realized transaction does not create or reinforce the dominant position of the company after the concentration.

FOR THESE REASONS:

The Competition Commission, pursuant to Article 24, letter “d”, Article 56, paragraph 1, and Article 69 of Law No. 9121, dated 28.07.2003, titled “On the Protection of Competition”.

DECIDED:

1. To authorize the concentration realized through the sale-purchase transaction of 76% of the shares of OSSH sh.a., owned by the Ministry of Economy, Trade and Energy to the company CEZ a.s.
2. The Secretary General is in charge with the direct monitoring of the electrical energy market.

⁷ Such authority is foreseen under Directive 2003/54/EC

3. The Secretary General is in charge to communicate such decision to the parties participating in the transaction and the Regulatory Entity for Electrical Energy.

This decision enters into effect immediately.

THE COMPETITION COMMISSION

Lush Perpali

(_____)

Deputy Chairman

Servete Gruda

(_____)

Member

Rezana Konomi

(_____)

Member

Koço Broka

(_____)

Member

Lindita Milo (Lati)

CHAIRWOMAN