



REPUBLIC OF ALBANIA
-THE COMPETITION AUTHORITY-
The Competition Commission

DECISION

No. 116, Dated 29. 05. 2009

**“On
exemption from the prohibition of the agreement entered between “Tirana
International Airport” Sh.p.k. and “Air BP Albania” Sh.a.,
“On provision for storage and sale of fuel for aircrafts and the supply
services into aircrafts at the Tirana International Airport “Mother
Teresa”.**

The Competition Authority, in its meeting held on 29.05.2009, with the participation of:

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

Subject: Exemption from the prohibition of the agreement entered between “Tirana International Airport” Sh.p.k. and “Air BP Albania” Sh.a.,

Legal basis : Article 24, letter “d”, Article 6, Article 49 and Article 50, paragraph 1 of Law No. 9121, dated 28.07.2003, titled “On the Protection of Competition”,

The Competition Commission, after reviewing the following document:

- The report “On Exemption from the prohibition of the agreement entered between “Tirana International Airport” Sh.p.k. and “Air BP Albania” Sh.a.,

NOTED THAT:

On 27.02.2009, the Competition Authority in accordance with Article 6 and 49 of Law "On the Protection of Competition", has received a notice from "Air BP" Sh.a and "TIA" (Tirana International Airport) Sh.p.k. for prohibition from the agreement "On the deposition and trading of fuel for aircraft and aircraft supply service in Tirana International Airport "Mother Teresa" entered between them on 24.02.2009.

I. Parties to the agreement

- **Tirana International Airport Sh.pk.**, (hereunder referred as TIA, and previously known as the Tirana Airport Partners Sh.pk.), a company established under the legislation of the Republic of Albania, registered in the Albanian Commercial Register by Decision No. 32147, dated 20.09.2004 of the Tirana Judicial District Court, with headquartered at "Buildings Administration" in Tirana's international airport. TIA owns through concession and exerts its activity at the International Airport "Mother Teresa" Tirana ("Airport" on the basis of Law no. 9312, dated 11.11.2004 "On ratification of the concession agreement between the Council of Ministers of the Republic of Albania and Tirana Airport Partners sh.p.k., for the building, putting in work, operation, maintenance of the Tirana International Airport "Mother Teresa" and providing of incentives to the concessionary company.
- AIR BP Sh.a., (hereunder referred as ABP) is a company established under the laws in effect in the Republic of Albania, registered in the Albanian Commercial Register by Decision No. 22194, dated 27.10.1999 of the Tirana Judicial District Court, headquartered at: Gurten Business Center, Kavaja Street, no. 116, office no. 113, Tirana. Albania. ABP owns and manages a fuel bunker near the airport under the terms of an exclusive concession agreement entered between the Tirana Airport Partners sh.p.k. and ABP, dated 28 April 2006. ABP operates in the field of trade of fuel for aircraft.

II. Description of the agreement

Through this agreement, TIA and ABP have agreed that ABP designs and builds a bunker fuel and a new structure within the airport area, in order to supply fuel to aircrafts, as well as the right to rent the area in which the new plant will be located.

Thus, ABP is the sub-contractor of TIA for the construction and operation of the new fuel plant for fuel storage, and provision of fuel sale and fuel delivery service to aircrafts (into plane service) for air operators in Tirana International Airport.

Air BP, under the agreement will be owner and operator of the plant fuel storage at the airport and also the only supplier of service (into-plane service) of fuel to aircrafts.

Under this agreement (under Section 3.7) TIA will not allow any other person, firm or company, to deposit fuel for aircraft or products on board of aircraft, within the airport area until 31 December 2014 or until such time when the number of passengers using Tirana International Airport shall exceed two million within a calendar year, thus giving ABP the exclusive right to provide supply services for aircrafts (plane into service).

The Agreement (under Section 4.2) allows third parties, which have been given permission to enter the airport from TIA to deposit their fuel in the fuel plant, provided that the annual demand for fuel coming from aircrafts of the third party and has been, and will continue to constitute at least 25% of the total demand for aircraft fuel at the airport¹, as well as meeting the safety standards and quality required by international parameters in connection with these services (the same as those applied by ABP).

III. Relevant market

The announced agreement aims to provide the storage and distribution of fuel for aircraft in the aircraft, for the airline companies operating in Rinas airport. Referring to Article 3, Section 7, of Law Nr.9121, dated 28.7.2003 "On protection of competition", the definition "relevant market", includes "products that are evaluated as substitutes from other customers or clients, based on their characteristics, price and function and that are offered or required by enterprises in a geographic area with the same competition conditions, an area being separated from other adjacent areas". This definition includes two components of the relevant market, namely:

- a. The products market
- b. Geographic market.

III.1. The relevant product market

¹ If no third party achieves the level of demand equal to 25%, ABP and TIA shall reasonably re-assess and reduce such level.

The relevant product market is the market for storage, trading and service of supply fuel for aircraft into the aircraft.

According to the agreement there will be three markets:

- a) The market for the provision of deposits to fuel aircraft.

Based on the agreement, Air BP is the only firm which accepts to make investment regarding the building a new plant for fuel, estimated by ABP to cost over 2 million dollars.

- b) The market of trading of fuel for aircraft.

Entities licensed to trade fuel of type c; category 3 / c (category classified as - fuel for reactive air flight vehicles – kerosene under Law no. 8450, dated 24.2.1999 "For oil, gas and sub products, Article 10), are: Air BP Albania Sh.a.; ARMO Sh.a.; MEICO Sh.a.; Global Petroleum Albania Sh.a.; Mamidoil & Airlines Sh.a. and Albania Jet Fuel Supply Sh.a.

- c) The market of fuel service delivery into aircraft

According to the agreement, as well as on the basis of European Commission Directive 96/67 of 15.10.1996 "The European Ground Handling Directive", i.e. the directive on assistance in land, there is no other firm that shall provide this service.

As a result TIA may be only a supplier of fuel supply and service aircraft.

- **Air BP Albania sh.a.** is the only company that operates in a very specific market such as the purchase market of fuel for aircraft. Jet A-1 Aviation Kerosene, is the only fuel, which is used with high safety on the aircraft engines.

Fulfillment of conditions for exemption

Economic benefits will not only favor the parties to the agreement, but also the consumers.

The agreement contributes to improving the conditions of market supply;

- The announced agreement improves the manner how the product is distributed in the market.

- Tirana International Airport will have deposits in its territory and will be able to monitor the stocks, the product quality and quality of service based on its standards.
- ABP, being one of the biggest international companies in the aircraft fuel market, is able to provide the product in other ways in case of absence from the current source.

Produces substantial benefits to the consumers

- ABP is an international supplier, well known in the aircraft fuel market and operating in over 1000 airports worldwide.
- ABP shall take care to provide to air operators a safe, economic and efficient service.

The impact that would bring the agreement will make the company more competitive in international market

- The Quality of service to be offered will be increased significantly— in comparison with the current situation in Tirana International Airport because the new plants, the construction of which is the responsibility of ABP, according to this agreement, shall meet international standards and the latest technological developments.

Benefits to the market:

1. It is ensured that Tirana International Airport has available fuel for aircraft operators for a long time and offered by a supplier with a good international reputation such as ABP International, which has access to sources of product with competitive prices and has the ability to offer a service which strictly implements international standards .
2. Based on the announced agreement will be used an advanced technology that will bring development regarding the safety level, quality of product and efficient costs. Furthermore, , will be applied an insurance of 750 000 000 USD² in order to provide full financial cover for any possible liability.
3. For consumers, with annual demand that exceeds 20% of the total annual supply in the airport, is set a price ceiling of 0.4 dollars for every U.S. gallon above the international price quoted on average of work days of the last half

² The reference is Section 6.5 of the Agreement.

month at Platts Cargoes FOB, with the aim of protecting consumers against arbitrary efforts to raise prices to unreasonable levels.

4. The announced agreement also achieves that the fuel storage plant is placed within the territory of the airport, from a location outside the airport where it previously was, which increases the safety and reduces the unnecessary movements and meets one of the main obligations of the TIA, as defined under the concession agreement.
5. This agreement, despite the restrictions that brings into market the service to supply fuel for the aircraft into aircraft and that are justified by the specifics of the service, contributes to improving the product distribution and service, maintaining and improving the quality of service, reduces product and the service costs, enables a right participation in benefit by consumers, promotes research and development and dissemination of professional knowledge, increases safety for the amount of goods and realizes full financial coverage for any possible responsibility.
4. Air BP as a company with experience in over 90 international airports runs several training programs, which are continuously seeking to improve knowledge and skills of staff working at the airport. In this way airport customers will have the highest quality of services as those that are offered in most major European airports.
5. This agreement, despite the restrictions that brings to the aircraft fuel supply service market into aircraft, are justified by the very specifics of the service: it contributes to improving the product and service distribution, maintaining and improving of the quality of service, reducing product and service costs, realizing a more just participation in benefits by consumers, promotes research and development and dissemination of professional knowledge, increases security for the amount of goods that offers, and realizes full financial coverage for any eventual responsibility:

FOR THESE REASONS:

The Competition Commission, pursuant to Article 24, letter “d”, Article 6, paragraph 1, letter „a“ and paragraph 2, and Article 50, paragraph 1 of Law No. 9121, dated 28.07.2003, titled “On the Protection of Competition”,

DECIDED:

1. To exempt from the prohibition (foreseen under Article 4 of Law “On the protection of competition”), the agreement made on date 24.02.2009 between “Tirana International Airport” Sh.p.k. and “Air BP Albania” Sh.a., “On provision for storage and sale of fuel for aircrafts and the supply services for aircrafts at the Tirana International Airport “Mother Teresa”.

The Secretary General is in charge to implement this decision and communicate such decision to the relevant parties.

This decision enters into effect immediately.

THE COMPETITION COMMISSION

Lush Perpali

Servete Gruda

Rezana Konomi

Koço Broka

(_____)

(_____)

(_____)

(_____)

**Deputy
Chairman**

Member

Member

Member

Lindita Milo (Lati)

CHAIRWOMAN