



REPUBLIC OF ALBANIA
-THE COMPETITION AUTHORITY-
-THE COMPETITION COMMISSION-

D E C I S I O N

Nr.91, Dated 26. 10. 2008

On

“On the notification of the concentration realized through the sale of 85% of the shares of ARMO sh.a and their purchase by joint venture ANIKA MERCURIA REFINERY ASSOCIATED OIL Sh.A”

The Competition Commission, on its meeting held on 26.10.2008, with the participation of:

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

Discussed the following issue:

Subject: The notification of the date 28 August 2008, on the concentration realized through the sale of 85% of the shares of ARMO sh.a and their purchase by joint venture ANIKA MERCURIA Refinery Associated OIL (AMRA sh.a).

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

Upon reviewing the the notification of the concentration, the Competition Commission

NOTED THAT:

I. The transaction and the concentration

The transaction including the sale of the shares of ARMO sh.a. by joint venture AMRA sh.a. was realized by means of contract signed on date 22 August 2008 by the Minister of Economy, Trade and Energy, the seller, and the representatives of Anika Mercuria Refinery Associated Oil (hereinafter referred as AMRA sh.a.), the buyer.

The joint venture AMRA sh.a. through this contract purchases 85% of the shares of ARMO sha company and therefore acquires full control by means of substituting the owner through the purchase of the majority of shares.

The value of this transaction is 128.750.000 Euro or 4.357.491 shares at the nominal value of 4.357.491.000 Lek that shall be paid in accordance with the conditions determined under Article 3, paragraph 1 and 2 of the share purchasing agreement. According to Article 3 of the Share Purchasing Agreement, the Buyer shall pay the Purchase Price no later than 10 days from the day of the completion of the agreement, by completion intended the obtaining of approval by all the state authorities.

The Contract for the sale of 85% of the shares of ARMO sh.a., entered into between the Ministry of Economy, Trade and Energy and the buyer "AMRA OIL, sh.a. was adopted by the Albanian Parliament by means of Law No. 9993, dated 18 September 2008, titled "On the ratification of the agreement for the sale of 85% of the shares of ARMO sh.a., entered into between the Ministry of Economy, Trade and Energy and consortium "Refinery Associates of Texas, Anika Enterprises & Mercuria Energy Group"("AMRA OIL, sha"]". This procedure is in compliance with the conditions stipulated under Article 10 of the Contract entered between the parties on 22 August 2008. Law 9993 was decreed by the President of the Republic by Decree No. 5901, dated 01 October 2008, and enters into effect 15 days upon its publication in the Official Gazette.

The notified transaction is presented as direct acquisition of control over ARMO sh.a., which is controlled by the majority shareholder AMRA sh.a., as owner of 85% of the shareholders' capital, (with voting rights). The other shareholder is the Ministry of Economy, Trade and Energy owning 15% of the shares.

In the meaning of Article 10, paragraph 1, letter "b" and paragraph 2 of the same article of Law No. 9121, dated 28.07.2003 "On Protection of Competition", as amended, the transaction realized between the participating parties is acquisition of sole control.

II. Parties to the transaction

-ARMO sh.a., with sole shareholder **the Albanian State, represented by the minister of Economy, Trade and Energy (METE)**, the Seller, of 85% of the shareholders' capital, exercises its activity in compliance with the Albanian legislation concerning the refinement, transport and trade of Oil, Gas and their

subproducts. ARMO sh.a. has a trade license valid for a ten-year period. METE is the sole owner and legal beneficiary of the capital amounting at 5.126.461.000 Lek and composed of 5.126.461 shares of ARMO sh.a., at a nominal value per share equal to 1 000 Lek.

- Joint venture Anika Mercuria Refinery Associated Oil (AMRA SH.A), the Buyer, is a joint stock company, founded and functioning in compliance with the Albanian legislation, registered on 2 July 2008 on the Commercial Registrar at the National Registration Center, with identification number K81902013T, and administrator Mr. Rezart Taçi, and with headquarters at the address: Blv. “Dëshmorët e Kombit”, Kullat Binjake Nr 2, Ap.9/1. Its capital is 2.000.000 Lek, divided into 2.000 shares at the nominal value of 1.000 Lek each.

Joint stock company AMRA OIL sh.a. is composed of the following companies:

- a. Anika Enterprises SA,** is a company founded and functioning in compliance with the Swiss Law, registered in the Commercial Register of Geneva, ID NO. 11277/2004 Ref. NO. CH-660-9227004-1 fed. dated 28 September 2004, with headquarters at the following address: Rue “San Loren”, 15-17 CH 1207, Geneva, Switzerland, represented by Mr. Rezart Taçi, who owns 100% of the company’s capital. The shareholders capital is about 100.000 Euro and is divided into 100 shares at the nominal value of 1.000 Euro each. The company is a shareholder and owns 70% of the shares of the joint venture AMRA OIL sh.a or 1400 shares at the nominal value of 1.400.000 Lek each.
- b. Refinery Associated of Texas INC,** is a company founded and functioning in compliance with the law in the Sate of Texas (US), registered in the Commercial Register of Texas, ID No. 76028500, dated 22 July 1985, with headquarters at the following address: Michael J. Utts, 145 Landa Street, New Braunfels Texas 78130-7867, SHBA, represented by Mr. Joseph Nelton Desormeaux, who is the sole shareholder of the company. The company is a shareholder and owns 20% of the shares of the joint venture AMRA OIL sh.a., or, equivalently, 400 shares at the nominal value of 400.000 Lek each. The shareholders capital is about **1000 USD**, divided into 100.000 common shares without nominal value.
- c. Mercuria Energy Group Limitet Cyprus,** is a company founded in the year 1993 in compliance with the legislation in effect in Cyprus, and with headquarters at the following address: Grigori Afxentiou Akamia 2 Build Flat, Zyra 401, Larnaca, Cyprus. The company is registered in the National Registrar of Nicosia, Cyprus, File No. HE145530. The shareholders’ capital of the company is 45.000.00 USD. The commercial activity of the group is managed through Mercuria Energy Group Holding SA Company, with headquarters in Geneva, Switzerland. In this transaction, the group is represented by its branch, Mercuria Energy Trading B.V,

a company founded in compliance with the legislation in effect in the Netherlands, and registered at the Commercial Regsitar of the Chamber of Commerce of the Netherlands, File No. 30197318, dated 13 July 2004, with headquarters at the following address: Koningslaan 112 3583 Gv Utrecht, Holland, represented by Mr. Cyrill Costes and/or Mr. Franck Blais. The company is shareholder and owns 10% of the shares of joint venture AMRA OIL sh.a. wich is the equivalent of 200 shares at the nominal value of 200.000 Lek. The shareholders capital is equal to 4.725.000 Euro.

III. Turnover of the undertakings

The total annual turnover of the year 2007 realized in the international market by the parties participating in the transaction is 3115 billion Lek, divided as follows:

- a) Anika Enterprises SA: 56 168 892 CHF = 4.5 billion Lek;
- b) Refinery Associated of Texas: 448 905 459 \$ = 40 billion Lek;
- c) Mercuria Energy Trading BV: 33 858 846 403 \$ = 3 070 billion Lek.

The total annual turnover of the year 2007 realized by ARMO sha in the domestic market is: 14 billion Lek.

IV. Relevant market

IV. I. The relevant product market

Pursuant to Article 3, paragraph 7 of Law No. 9121, dated 28.07.2003 “On Protection of Competition”, as amended, the definition of “relevant market” includes “...products that consumers or other clients consider as substitutes based on characteristics, price and their use, and that are supplied or required by the undertakings operating in geographical areas with same conditions concerning competition, and these areas are distinct from other adjacent areas”. This definition includes both components of product market, which are:

- a. the product market; and*
- b. the geographical market.*

IV. I. a. The relevant product market

ARMO sha is the only company that operates in a rather specific market such as the purchase and refinement of raw oil produced in Albania. The activity of ARMO sha is the purchase and refinement of raw oil produced in Albania and the sale (wholesale and retail services) of its subproducts. The product trade activity carried on by ARMO sha includes exporting mainly towards neighbouring countries, and limited exporting towards European Union countries due to the high percentage of sulphur contained in its products.

AMRA Oil sh.a. is engaged in the following activities:

- Export-import of hydrocarbons.
- Refinement of oil and its subproducts;
- Retail of hydrocarbons of all types;
- Purchase, import, export, transport [also on behalf of third parties], storage, mixture, treatment, sale, wholesale distribution of coal, gas, lubricants, oil products and oil chemical compounds, to include bitumen;
- Purchase, sale, lease, construction and administration of plants, deposits and the administration of its buildings and other immovable property;
- Other activities such as issuing of guarantees.

IV. I. b. The relevant geographical market

The commercial company ARMO sha exercises the activity of refinement and sale of oil and its subproducts in several districts and units registered in the Commercial Registrar, such as in Tirana, Fier, Ballsh, Mallakaster, Shkoder, Durres, Vlore, etc. The sale of the company's products is realized in all the Albanian market.

For the purpose of the assesment of this concentration and its impact in the internal market, we consider the internal market i.e. the territory of the Republic of Albania as the geographical market.

V. The evaluation of the competition

The realization of this transaction is expected to have a direct impact in the Albanian oil market. This impact is expected both in the trading of oil and its subproducts, and the refinement. One consequence of the concentration is the development of ARMO sha from the management, administration and the technological standpoints. The transaction aims to exploit better existing resources as well as exploit new ones, to increase the quality of the traded products and their marketing under its trademark and the logo "Made in Albania", the improvement of working conditions, investment on the improvement and protection of the environment during the firts three years, etc.

The substitution of the public shareholder with a private shareholder is expected to improve the technology and environmental conditions due to the expertise of one of the companies participating in the consortium, as well as a improvement of the financial situation of ARMO sh.a. because of the financial strength of Mercuria Energy Holding in particular.

The analysis of competition covers two aspects: one concerns the products for which there are no affected markets between the Buyer and ARMO, and the

markets where the main shareholder and the buyers' administrator owns companies that currently operate on the same product market.

ARMO buys unrefined oil and after refinement produces Solar, Mazut, Koks, liquid bitumen, thinners, Virginia and Gasoil.

V.1 Regarding products for which there are no markets affected by the concentration

ARMO sh.a is currently the only undertaking in the market of oil refinement and the production of Solar, Mazut, Koks, liquid bitumen, thinners, and Virginia, which production is not part of the activity of other undertakings that operate in the wholesale and / or retail market of oil, gas and their subproducts. Also, the undertakings of the buyer do not have any similar product markets, and therefore there are no affected markets as a result of the concentration.

As a result of the concentration, the buyer gains the exclusive right for the production of these products, thus acquiring significant market power for the following products: Solar, Mazut, Koks, liquid bitumen, thinners, and Virginia. Therefore, the Competition Authority shall continuously monitor its behaviour, because of the monopolistic position (dominant position) that the buyer shall gain in the relevant market of these products.

V.2- Regarding products for which there are markets affected by the concentration

In the meaning of Law No. 9121, dated 28.07.2003 "On Protection of Competition", as amended, specifically Articles 10-12 and Chapter III of the Control of Concentrations, the Competition Authority has evaluated the impact that this concentration may have in the market, from the standpoint of eventual creation or strengthening of dominant position of the undertakings in the market.

There are no directly affected markets between AMRA sh.a. and ARMO sh.a. because, before the concentration AMRA sh.a. was not operating in the Albanian market. However, indirectly we may consider that their markets are affected, because one of the shareholders, which is the administrator of AMRA sh.a. owns a company that operates in the market of hydrocarbons.

The only product produced by ARMO sh.a. there where there are affected markets with the company owned by one of the shareholders of the buyers, is Gasoil, which represents around 21% of the total production by ARMO sh.a. in the year 2007.

The product named "gasoil" that is being refined and traded by Armo sh.a. is a product relatively substitutable by imported Diesel (D1,D2), traded by Taci Oil

Company (which owns indirectly 59.5%⁽¹⁾ of AMRA OIL sha). Therefore, the affected market concerns only the distribution (trading) market of Diesel (gasoil). The degree of substitutability is incomplete because of the different degree of concentration of sulphur in the imported gasoil and that produced in country.

However, even if we take into consideration the respective market shares of ARMO sh.a. and Taçi Oil International that are controlled by the same person, and calculate the concentration index HHI, results that the degree of market concentration, after the concentration has taken place, increases but still remains a market moderately concentrated, without crossing the threshold towards a highly concentrated market.

Furthermore, the market structure is characterized by other strong competitors owning significant market shares, such as Kastpetrol occupying 17% of the market, Europetrol SG occupying 12% of the market, Viloil with 3% of the market, Global Petroleum with 7% of the market – all of which being the current and future main competitors in the hydrocarbons market.

As a conclusion, the notified transaction consists on the acquisition of control of 85% of the shareholders' capital of ARMO sh.a. by AMRA sh.a., and does not create or reinforce any dominant position of the company in the market.

In addition, pursuant to Article 8, paragraph 3 of the contract on the sale of 85% of the shares of ARMO sh.a., entered between the Ministry of Economy, Trade and Energy (the seller) and "AMRA OIL sha", and consortium "Refinery Associates of Texas, Anika Enterprises & Mercuria Energy Group", (the buyer), the Ministry of Economy, Trade and Energy shall continuously monitor on whether there will be any change in ownership title over the shares of AMRA sh.a.

Pursuant to the contract for the purchase of the shares, the members of the joint venture AMRA sha, may transfer their respective shares to any of their branches, on the condition that the latter agree over such transfer and express in writing their agreement on the conditions of the transfer. In case when the branch shall transfer shares of third parties, in total or in part, the seller [the Albanian state, the Ministry of Economy, Trade and Energy], has reserved the right to express its approval [or disapproval] regarding the proposed beneficiary of the transfer, within a five-year period after the date on which the contract enters into effect. Therefore, as per consequence, and pursuant to Article 69 of Law No. 9121, dated 28.07.2003 "On Protection of Competition", as amended, the Competition Authority shall provide her assessment.

FOR THE ABOVE REASONS:

Pursuant to Article 24, letter "d", and Article 56, paragraph 1, and Article 69 of Law No. 9121, dated 28.07.2003 "On Protection of Competition", as amended, the Competition Commission,

¹ Pjesa prej 70% që zotëron z. Rezart TACI në paketën prej 85% të aksioneve të ARMO sha nëpërmjet zotërimit të 100 % të aksioneve të shoqërisë ANIKA.

DECIDED:

1. To authorize the concentration realized through the sale of 85% of the shareholders' capital of ARMO sha by joint venture AMRA sha.
2. To require from the parties participating in the transaction that in case of the change in ownership title over AMRA's shares, either between the shareholders, or third parties, they address the Competition Authority for an assessment, prior to making the said transaction [change in ownership].
3. This decision enters into effect immediately.

THE COMPETITION COMMISSION

Lush Përpali
(_____) **Deputy Chairman**

Servete Gruda
(_____) **Member**

Koço Broka
(_____) **Member**

Lindita Milo (Lati)
CHAIRWOMAN