



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

No. ____ Prot.

Date 30/12/2008

D E C I S I O N

No. 99, Dated 30. 12. 2008

On

“Recommendation with regard to the revocation of the Decision of the Council of Ministers No. 1110, dated 30.07.2008, with the motivation of limiting market competition”

The Competition Commission, on its meeting held on 30.12.2008, 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: On limitation of competition caused by Decision of the Council of Ministers No. 1110, dated 30.07.2008, “On the quality of hydrocarbures produced by the refinement of in-country produced crude oil.”

Legal basis: Law No. 9121, dated 28.07.2003 “On Protection of Competition”, as amended, Articles 24, letter “d”, Article 70, paragraph 2.

Upon the reviewing of the following documents:

- The Report on the Assesment of the limitation of competition in the hydrocarbures market as a result of legal and normative acts in effect;
- The complaint filed with the Competition Authority by the Association of Hydrocarbure Companies No. 18/1, archived with the Competition Authority Prot. No. 546, date 19.12.2008; Preliminary Investigation on the primary and secondary market of treasury bonds;

The Competition Commision,

NOTED THAT:

I. The Competition Commission, upon the review of the Report “On the assesment of the impact of legal and normative acts into the hydrocarbures market”, in particular with reference to the product “Diesel fuel standard S SH EN 590”, the relacion presented by the Secretary General and the complaint filed with the Competition Authority by the Association of Hydrocarbure Companies, notes that:

Through Decision by Council of Ministers No. 1110, dated 30.07.2008, “On the quality of hydrocarbures produced by the refinement of in-country produced crude oil”, the competition in the relevant market of diesel fuel is under restrictions, by means of application of differentiated conditions for the trade of in-house produced goods versus imported goods.

Such differentiation concerns the period 1 January 2009 -1 January 2010 and the period 1 January 2011 – 1 January 2012. After the date 1 January 2012 becomes clear that is allowed to import, or produce in-country only hydrocarbures which content of sulphur i sup to 10 mg/kg.

Therefore, for the same product that can be both imported and produced by the sources available within the territory of the Republic of Albania, are placed restrictions that until 1 January 2012, favorize the trade of hydrocarbures refined in domestic facilities.

Such differentiation causes a restriction of competition in the meaning that it places in unequal positions the market competitors, by limitin the supply of goods and favorizing a monopolistic setting, in disagreement with the competition policies and law.

Also, besides the protection of free and effective market competition, one of the main objectives of competition policies and law is the protection of the consumer and the harmonization with the policies for the protection of the environment.

II. The Republic of Albania has signed the Agreement for the Amendment and Extension of the Central Europe Free Trade Agreement^{1/2}(CEFTA) according to which, the Albanian state, in the meaning of Article 19 of the same, is committed to “...adapt any state-owned monopoly of commercial nature, and state-owned commercial enterprise in order to comply with the dispositions of the World Trade Organization, based on which there should be no discrimination between the undertakings of the parties in relation to the conditions based on which are traded the products.”

Pursuant to Article 20 of this agreement, any practice that is in contradiction of Articles 81, 82 and 86 of the EU Treaty, shall be considered in breach of the appropriate functioning of this agreement to the extent that these practices impact the trade relations between the parties involved.³. Again, pursuant to the same article, until 1 May 2010, the Albanian state is obligated to regulate free market competition in the meaning of Articles 81, 82 and 86 of the EU Treaty, also foreseen under Articles 27 and 37 of Law

¹ Entered into effect on 1 May 2007

² The purpose of this agreement, among other, is to ensure fair conditions for competition that have an impact in trade and foreign investment, and to gradually open the markets for public procurement by the parties.

³ Palët e kësaj marrëveshjeje janë: Republika e Shqipërisë, Republika e Moldavisë, Bosnja Hercegovina, Republika e Malit të Zi, Republika e Bullgarisë, Republika e Rumanisë, Republika e Kroacisë, Republika e Maqedonisë.

No. 9591, dated 27. 07. 2006 “On the Reatification of the Interim Agreement between the Republic of Albania and the European Community for Trade and Trade Relations”.

In relation to the above, the Competition Commission notes that Decision by Council of Ministers No. 1110, dated 30.07.2008, “On the quality of hydrocarbures produced by the refinement of in-country produced crude oil”, restricts significantly the competition in the relevant market of diesel fuel, by allowing only one source for production and supply, as created through this normative act.

FOR THE ABOVE REASONS

Pursuant to Article 24, letters “d”, and “f”, and Article 70, paragraph 2 of Law No. 9121, dated 28.07.2003 “On Protection of Competition”, as amended, the Competition Commission,

DECIDED:

1. To recommend to the Council of Ministers the revocation of DCM No. 1110, dated 30.07.2008, “On the quality of hydrocarbures produced by the refinement of in-country produced crude oil”, in order to avoid restrictions, limitations and distortions of competition in the market.

This decision enters into effect immediately.

THE COMPETITION COMMISSION

Lush Përpali
(_____) **Deputy Chairman**

Servete Gruda
(_____) **Member**

Koço Broka
(_____) **Member**

Lindita Milo (Lati)
CHAIRWOMAN