



**REPUBLIC OF ALBANIA
-COMPETITION AUTHORITY-
COMPETITION COMMISSION**

**DECISION
No. 198 of 25 August 2011**

**“On
taking interim measures to restore competition in the loading-and-unloading and
storing liquefied gas market, in Porto-Romano Port”**

The Competition Commission, composed of

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|-----------------------|--------|
| • Lindita Milo (Lati) | Chair |
| • Servete Gruda | Member |
| • Koço Broka | Member |
| • Rezana Konomi | Member |

in its meeting of 25 August 2011 reviewed the Case with:

Subject-matter: Taking interim measures to restore competition in the loading-and-unloading liquefied gas market, in the geographical market area of Porto-Romano.

Legal basis: Articles 9, 24 (d), 26 and 44 (1) of Law no. 9121 of 28 July 2003 “On Competition Protection”.

After reviewing the

- Competition Authority Secretary-General Report;

THE COMPETITION COMMISSION NOTES THAT:

Prima Gas Albania sh.a. submitted a complaint to the Competition Authority, No. PGA–AK0811, dated 12.08.2011, archived by the Competition Authority with archive No. 355 on 12 August 2011. Prima Gas Albania sh.a. also filled in a complaint form, which was archived by the Competition Authority with archive No. 355/1 on 12 August 2011.

In its complaint, Prima Gas Albania sh.a. claimed that it had completed an investment in building coastal Liquefied Petroleum Gas (LPG) storage facilities of a capacity of 3,600 m³ in the area of Porto-Romano in Durrës, for which it had received from the Ministry of

Economy, Trade and Energy (METE) Authorization No. 26 of 3 May 2010. The undertaking claimed that it had a site permit for the storage facilities, issued by the Land Use Management Council of the Commune of Katund i Ri (Decision No. 8 of 27 August 2010). Additional documentation for the facilities included an Environmental Permit, a Technical Memo from the Fire Protection and Rescue Services (FPRS), Technical Design Approval Memos from the Central Technical Inspectorate (CTI), etc.

The company had had all the relevant testing procedures carried out by E.C.I.T. shpk (a company authorized by CTI) and by CTI inspectors on both storage facilities and the pipelines connecting the storage facilities with the main pipelines of Romano Port Hydrocarbon Port. This was attested by Technical Certificate No. 358 of 12 July 2011, issued by CTI.

Prima Gas Albania sha claimed that, based on entirely abusive grounds, Romano Port sha, which is the concessionary operator of the port, had not allowed the unloading of an LPG tanker ship (LPG/C SEAGAS GOVERNOR), which was carrying 1,500 tonnes LPG to Romano Port on behalf of Prima Gas Albania sha. The latter had complied with all the required procedures under the Rules of Port Operation No. 4 of 27 April 2009 and Law No. 9298 of 28 October 2004.

Prima Gas Albania sha complained that there had been a violation of Article 9 of Law No. 9121 of 28 July 2003 "On Competition Protection", in the form of abuse of a dominant position by Romano Port sha. Based on these grounds, Prima Gas Albania sha applied for immediate measures lest any irreparable damage to the market and Prima Gas Albania sha was caused.

Proceedings

Following an onsite verification of the complaint on 23 August 2011, a meeting was organized in the premises of Romano Port sha with Mr. Piro Bare, Managing Director and owner of 99.84% of the company shares. The purpose of the meeting was to receive explanations on its refusal to allow the unloading of the LPG tanker for Prima Gas Albania sha. Minutes of the meeting were also kept.

In his explanations, Romano Port sha Managing Director claimed that the main reason for not allowing the unloading of the tanker was Prima Gas Albania sha failure to produce the documentation requested by Letter No. EXT of 8 August 2011.

Mr. Bare stated that, under the Law on Concessions, Romano Port sha had a legal obligation to only operate with licensed companies that were qualified to carry out that business.

A hearing was organized on 24 August 2011 with the Complainer, who stated that the LPG tanker had arrived on 12 August 2011, had received clearance from Customs and the Central Technical Inspectorate (CTI), and had paid any dues; however, the tanker had not been allowed by Romano Port sha to unload. Romano Port sha had been informed about the upcoming arrival of the tanker by an email dated 8 August 2011. Romano Port sha had requested additional documentation. The representative from Prima Gas Albania sha tendered all the correspondence with Romano Port sha, and the following documentation related to the storage facilities:

- 1- Authorization No. 26 of 3 May 2011 issued by METE;
- 2- Environmental permit as LPG storage and trading operator, issued to the address: Porto-Romano, by the National Licensing Centre;
- 3- Trade Permit No. 153 of 15 November 2006, issued by METE for a period of ten years;
- 4- Form 3/1: Facility connection with civil infrastructure for coastal storage facilities in Porto-Romano;
- 5- Technical Memo No. 120 of 10 August 2011, issued by the Fire Protection and Rescue Services (FPRS);
- 6- Registration Certificate bearing a secondary address at Porto-Romano, Durres, issued by the National Registration Centre (NRC);
- 7- Decision No. 8 of 27 August 2010 by the Land Use Management Council of Commune of Katund i Ri, Durres;
- 8- Technical Certificate No. 358 of 12 July 2011 "On compliance with technical rules at LPG storage facilities" issued by CTI;
- 9- Form No. 4, issued by the Land Use Management Council of the Commune of Katund i Ri on 1 November 2010;
- 10-Occupancy permit of 12 August 2011, issued by the Commune of Katund i Ri, on: Coastal storage facilities--external stockade;

In addition, the representative from Prima Gas Albania sha stated that he had sent two other letters to Romano Port sha—on 15 August 2011 and 17 August 2011 (by email)—requesting compliance with Authorized State Body Decision No. 5573/6 of 12 August 2011 On the unloading of the tanker commissioned by that undertaking; however, Romano Port sha had not replied.

Thus, from its arrival at Romano Port sha facility on 12 August 2011 until 24 August 2011, the tanker was not unloaded, and, according to the complainer's representative, the economic damage was USD 14,000 a day, amounting to a total of USD 140,000.

Legal Assessment

Prima Gas Albania sha is a business entity operating in the market of processing, transporting, wholesaling and retailing oil and its by-products. It has built a coastal LPG storage facility with a capacity of 3,600 m³ in the area of Porto-Romano.

The Albanian State granted the Porto-Romano port under a concessionary agreement to Romano Port sha, pursuant to Law No. 9298 of 28 October 2004 "On the Ratification of the BOT Concession Agreement on the Building and Operation of the Oil and Gas Terminal in the Coastal Area of Porto-Romano, Durrës". Under the agreement, this undertaking had undertaken to build by the agreed date (31 May 2009) and operate an oil and gas terminal and the related port infrastructure to be used by coastal storage facilities that would be built in the coastal area of Porto-Romano.

Pursuant to Paragraph 4 of the Agreement, the concession holder is obliged to observe the right to equality towards companies wishing to provide services through the said terminal, while complying with the relevant legislation in power. The concession object is the only activity the concession holder may carry out under the Agreement.

Porto-Romano port was classified as a port open to international traffic by Council of Ministers' Decree No. 306 of 25 March 2009, following which it could start operating in compliance with the concessionary agreement.

Decision no. 4 of 27 April 2009 of the Authorized State Body approved the Rules of operation of the fuel processing port by Romano Port sha.

- The purpose of the Regulation is the organization of the legal business activity for the operation of Romano Port as a port that is open to international traffic (Article 1);
- The Regulation applies to Romano Port sha Hydrocarbon Port and all vessels shipping oil, gas and their by-products in it.

Oil product consignee has the obligation to submit the following documentation to the Port Authority prior to unloading:

- Customs authorization to process the ship;
- Goods quality documentation issued by the Quality Assurance Laboratory;
- Environmental requirement compliance documentation issued by Environmental Authorities;
- Proof of payment of Port service fees.

During the period from the notice to the arrival of the ship, the consignee coordinates with Romano Port sha hydrocarbon port to ensure the availability of port installations and infrastructure for the unloading of oil products. Upon ship's arrival at roadstead,

following transactions with the relevant authorities and completion of Customs procedures, the Port Management issues a docking permit.

Thus, pursuant to the laws and regulations in power, Porto Romano sha is entitled to requesting only the documentation listed above, and to ensure the safety of ships, and not to request any additional documentation on the basis of which Porto Romano sha claimed to have refused the unloading of the ship carrying goods on behalf of Prima Gas Albania sha.

The undertaking did, however, provide all the necessary documentation required by the relevant institutions ensuring the technical safety of the storage facilities and connection facilities. (Technical Memo No. 120 of 10 August 2011, issued by the Fire Protection and Rescue Services; CTI Technical Certificate No. 358 of 12 July 2011).

Conclusions

Having regard to:

- Competition Commission Decision no. 196 of 29 July 2011 “On initiating an inquiry into the market of loading-unloading of liquefied gas in Porto-Romano port” ordering an inquiry into the market of loading-unloading of liquefied gas in Porto-Romano Port.
- Competition Commission Decision no. 197 of 29 July 2011 “On taking interim measures to restore competition in the loading-and-unloading and storing liquefied gas market, in Porto-Romano Port” ordering the taking of interim measures against Romano Port sha.
- Authorized State Body Decision no. 5537/6 of 12 August 2011 ordering Romano Port sha to process all the ships commissioned by companies owning or operating coastal storage facilities in the area of Porto-Romano, including undertakings owning or operating LPG storage facilities. The Decision also includes provisions on coordinating efforts with the Competition Authority and other Albanian public institutions in order to ensure an open and competitive market of oil and gas shipping and trading.
- The BOT concession agreement, with its respective Annexes;
- Porto-Romano Port refusal to allow the unloading of the tanker ship commissioned by Prima Gas Albania sha;
- The fact that Romano Port sha refusal to unload the LPG tanker commissioned by Prima Gas sha might cause serious economic harm to the latter and could amount to a violation of Article 9 of the Competition Protection Law.

- The repeated refusal by Romano Port sha to unload ships commissioned by some of the companies operating in the market of liquefied gas,

The Competition Commission concludes that there is a risk of serious and irreparable damage to competition and potential violation of Article 9 of the Competition Protection Law.

FOR THESE REASONS:

The Competition Commission, pursuant to Articles 9, 24 (d), 26 and 44 (1) of Law no. 9121 of 28 July 2003 "On Competition Protection",

DECIDED:

1. To take the following interim measures: *Order Porto Romano sha to facilitate the processing of the LPG tanker ship commissioned by Prima Gas Albania sha immediately, but no later than five days from the notification of this Decision.*
2. To ensure immediate enforcement of the legal obligation of Romano Port sha to facilitate the unloading of the ships commissioned by the rest of the companies operating in the LPG trading industry, with a view to opening the market and ensuring free competition.
3. To impose fine for serious breach of competition of up to 10% of annual turnover pursuant to Article 74 (1) (b) of Law No. 9121 "On Competition Protection" if the interim measures referred to in Paragraphs 1 and 2 of the Disposition are not complied with.
4. If the interim measures are not complied with by the deadlines specified in this Decision, pursuant to Article 76 (1) (b) the Competition Commission may impose a periodic fine of 5% of the average daily turnover for each day of delay.
5. These interim measures shall be in force until the completion of investigation.
6. The Competition Authority Secretary-General shall notify this Decision to Romano Port sha.

This Decision shall enter into force immediately.

COMPETITION COMMISSION

Servete Gruda

(_____)

**Koço Broka
AGAINTS**

(_____)

Rezana Konomi

(_____)

Member

Member

Member

Lindita Milo (Lati)

CHAIRPERSON
