



**REPUBLIC OF ALBANIA
-COMPETITION AUTHORITY-
Competition Commission**

**DECISION
No. 159 of 19 November 2010**

“Recommendations on increasing competition in the electricity market”

The Competition Commission, composed of

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

in its meeting of 19 November 2010 reviewed the Case with:

Subject-matter: Recommendations on increasing competition in the electricity market.

Legal basis: Law no. 9121 of 28 July 2003 “On Competition Protection”— Articles 24 (d), 28 and 70.

After reviewing the Working Group Report on Monitoring the Electricity Market and the Secretariat Additional Report on Monitoring the Electricity Market, and following the consultations with the Energy Regulatory Entity,

NOTES THAT:

A well-functioning electricity market, ensuring that there is secure electricity supply at competitive prices, is a key factor for ensuring economic growth and consumer wellbeing.

The traditional structure of electric systems is a vertically integrated unit, which is often a natural monopoly. Competition is created by unbundling that structure into its components, while identifying those elements that can be actively involved in competition and those activities that should be maintained under regulation.

Although visible progress has been made in this respect, a priority for Competition Authority work is the taking of further measures for the liberalization of this market. This has been embodied in a series of decisions that aim at promoting competition, on one hand, and the supporting the Energy Regulatory Entity, on the other.

I. Electricity Market Characteristics

After evaluating the abovementioned Reports, we found the following overall market characteristics:

1. The electricity market is characterized by its vertical integration—production, transmission and distribution, which are performed by KESH sh.a., OST sh.a. and CEZ-Shperndarje sh.a. (OSSH). KESH sh.a. is composed of two vertically integrated segments—KESH-Gen and the Furnizuesi Publik me Shumice (Public Wholesale Supplier)—which operate as one single entity. Cez-Shperndarje, too, is composed of two vertically integrated segments—Shperndarja (Distribution) and Furnizuesi Publik me Pakice (Public Retail Supplier)—which operate as one single entity.
2. There has been no implementation in practice of the electricity market model requirement in Council of Ministers' Decree no. 338 of 19 March 2008, under which the Public Wholesale Supplier and KESH-Gen should be financially and operationally separated, while, in fact, they operate as a single entity. The functional and financial separation of the Public Wholesale Supplier from KESH-Gen would create the conditions for competition at that market level for interested parties (PPE, PVE, Qualified Suppliers).
3. In addition, according to the electricity market model, it is important to have a functional and financial operation of the Public Retail Supplier from the Distribution System Operator. That separation would ensure effective competition, provide more choice options for consumers, and eliminate cross subsidies in that market segment. There is also the possibility that OSSH could use technical indicators and various procedural delays in order to discriminate against competitors in the retail supply market.
4. Ensuring free and effective competition in the electricity market aims, first of all, at guaranteeing end-users' rights to receiving quality services at lower costs. To that end, service providers, especially when they have dominant power, have special obligations towards consumers. Thus service providers should guarantee electricity supply in line with the contracted technical conditions and quality. On the other hand, customers should pay for the contracted energy. Consumers should be recognized, however, under a contract, the right to damages when the electricity supply is not consistent with the technical conditions.

1.1 Regulated Market Segment

5. The full liberalization of the electricity market requires its opening to competition, thus providing more choices for consumers in as many links as possible—from production to the end-consumption of electricity. Despite the market liberalization efforts, the current level of liberalization does not allow or provide for the required room for new operators to enter the retail supply market or for consumers to have more options they can choose from for electricity supply.
6. To that end, the Public Retail Supplier was established, with the idea to provide end-consumers with more supplier choices. However, OSSH and FPP are two market segments within one entity. They should be legally separated functionally and financially, which has not occurred in practice, yet. According to the Energy Regulatory Entity it is possible to separate the financial accounts of OSSH and FPP, while their functional separation cannot happen until 2014.
7. Based on the above, we can say that the electricity market is highly concentrated, since only one operator operates in each of its segments. The electricity market is vertically integrated at two various levels.

1.2 Deregulated Market Segment

8. KESH sh.a. sells electricity at economic profit in the export market in accordance with the regulation adopted by ERE. That is an open and competitive market, as pursuant to Articles 4, 5 and 6 of the Regulation on Rules and Procedures for Selling Electricity KESH sh.a. is free to select the company it intends to sell electricity to for economic profit, through an auction procedure.
9. The buying of energy used to cover losses (*de facto*, it is only through imports) is open to competition, since the number of operators in that market is not restricted and the market share of about 11 operators that have won the import tender procedures vary from 31% to 1%.
10. KESH sh.a. has not participated in the Distribution System Operator (OSSH) tenders for purchasing energy to cover losses since when the ownership of 76% of OSSH shares changed.
11. In general, quantity-weighted average prices of the exported electricity generated by KESH-Gen are higher than the weighted average prices of the electricity imported by OSSH to cover losses. According to the data from KESH sh.a. and OSSH, the export price was lower than the import price only in March 2010.
12. The monitoring carried out by the Competition Authority did not find any indications of competition restriction in the unregulated part of the electricity market.

FOR THESE REASONS

Pursuant to Articles 24 (d), 28 and 70 of Law no. 9121 of 28 July 2003 "On Competition Protection", as amended, with the proposal of the Secretariat, the Competition Commission,

DECIDED:

1. To recommend the Ministry of Economy, Trade and Energy and the Electricity Regulatory Entity to:
 - 1.1 Ensure functional and financial segregation of the "Public Wholesale Supplier" from KESH-Gen, which would establish the conditions for competition at this market level for all interested parties (PPE, PVE, and Qualified Producers) that would enable competitive transactions;
 - 1.2 Ensure real financial segregation of the "Distribution System Operator" and the "Public Retail Supplier" so that they operate as financially separate entities. Those market segments have been liberalized and the recommended measures would lead to increased competition;
 - 1.3 Expedite the tariff-customer agreement revision process, setting obligations for the Public Retail Supplier in order to protect consumers through observance of service quality indicators (supply vs. interruption of electricity, and accurate billing).
2. The Secretary General shall be charged with enforcing this Decision.
3. This Decision shall enter into force immediately.

COMPETITION COMMISSION

Servete GRUDA
Member

Koço BROKA
Member

Rezana KONOMI
Member

Lindita MILO (LATI)

CHAIRPERSON

Minority Opinion

I have taken the following opposing position towards the reasoning section of Competition Commission Decision no. 159 of 19 November 2010 "Recommendations on increasing competition in the electricity market":

I- Firstly, I do not approve in their entirety the Working Group Report on Monitoring the Electricity Market and the Secretariat Additional Report on Monitoring the Electricity Market, except for those sections that are related to the arguments underlying the recommendations above,

II- The monitoring of the electricity market is not complete. The evaluation of the legislation listed in Section 2 "Legal Framework" in the Additional Report on Monitoring the Electricity Market is merely limited to listing a total of 20 laws and regulations and does not contain an analysis for a full assessment of the listed legislation and, what is more important, of its practical implementation.

III- With reference to Section 6 "Implementation of Competition Commission Decisions", I consider as unfair, impartial and wrong the failure to include an analysis of all the paragraphs of the Disposition of Decision no. 90 of 7 October 2008. The Working Group's failure to include in the analysis, especially, Paragraph 2.2, which states "To recommend the Ministry of Economy, Trade and Energy and the Electricity Regulatory Entity to: 2.2 Observe Article 69 of Law no. 9121 "On Competition Protection", in order to take, on time and before acts are enacted, the Competition Commission evaluation of possibilities for competition restriction, distortion or prevention by laws and regulations, and increase the transparency in the process of further privatization and liberalization of the Electricity Sector." is unjustified and condemnable. It deliberately distorts the lack of possibility for the Competition Commission to perform objective and comprehensive evaluation of acts that might have led to competition restriction. Some of those acts, especially the annexes to the privatization contract, were not made available to the Competition Commission. They were not made available even after the Commission's explicit request.

IV- I do not agree with the ex-ante assessment in the Report, and in this Decision that:

"KESH sh.a. sells electricity at economic profit in the export market in accordance with the regulation adopted by ERE. **That is an open and competitive market.**"

"The buying of energy used to cover losses (*de facto*, it is only through imports) is open to competition."

13. "The monitoring carried out by the Competition Authority did not find any indications of competition restriction in the unregulated part of the electricity market."

Based on (a) the lack of evaluation of all the enacted legislation on the electricity market; (b) the misuse of the hydropower plant water reservoirs, where only in 2010 the discharge ports of Vau i Dejes Hydropower Plant on the Drin were opened five times; (c) the fact that electricity was imported by OSSH (CEZ) even while Shkodra was being flooded by the water discharged by the hydropower plants; while agreeing with the Disposition of this Decision, I am against its fact-finding part, as I have listed them above. I reaffirm my request for the Competition Authority to initiate an investigation into the electricity market with regard to potential competition distortion by KESH-Gen and OSSH. The conduct of a comprehensive and objective investigation remains a major issue.

Commission Member

Koço Broka