



REPUBLIC OF ALBANIA
-THE COMPETITION AUTHORITY-
The Competition Commission

DECISION

No. 107, Dated 23.04.2009

**“On
Requirement of information from the company “Taci Oil International
Trading” Sh.A. through decision adopted by the Commission”**

The Competition Authority, in its meeting held on 23.04.2009, with the participation of:

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

Discussed the following issue :

Subject: Requirement of information from the company “Taci Oil International Trading” Sh.A. through decision adopted by the Commission.

Purpose: To obtain information from all the undertakings under investigation in order to ensure objectivity in the decision-making process, before the adoption of a decision of the Commission concerning the market behaviour of the undertakings, and the restrictions in the hydrocarbons market that are caused by the legal and normative acts that affect that market.

Legal basis : Article 24, letter “d”, and Article 33, paragraph 2 of Law No. 9121, dated 28.07.2003, titled “On the Protection of Competition”.

NOTED THAT:

The Competition Authority has launched an investigation into the hydrocarbons market based on Decision No. 47, dated 11. 03. 2008 “On the launching of the In-depth Investigation Procedure in the Hydrocarbons Market”, adopted by the

Competition Commission. In the course of the proceedings, the Competition Commission has organized hearing sessions with all the undertakings under investigation. During these hearing sessions, the Competition Commission has addressed various questions that were deemed necessary to realize a transparent and fair decision-making process. The company "Taci Oil International Trading" Sh.A. has declined to attend any of the aforementioned hearing sessions.

Through note verbal No. 137, dated 20.03.2009, "On request of information", issued and submitted by the Competition Authority, was required by the aforementioned undertaking to provide the information, as required, within the date 10. 04. 2008. Even after the expiration of the deadline, the company "Taci Oil International Trading" Sh.A. failed to provide the required information.

According to Article 33, paragraph 2, of Law No. 9121, dated 28.07.2003, titled "On the Protection of Competition", the Competition Commission may require information through the issuance of a decision. In case the undertakings do not provide accurate, or complete information, or provide misleading information, or decline to provide information at all, within the deadline established in the relevant decision, the Competition Commission may impose fines at the amount equalling no more than one per cent of the annual turnover of the preceding financial year. Such sanction is based on Article 73, paragraph 1, letter "a" of Law No. 9121, dated 28.07.2003, titled "On the Protection of Competition".

FOR THESE REASONS:

The Competition Commission, pursuant to Article 24, letter "d", and Article 33, paragraph 2, of the Law No.9121, dated 28.07.2003, titled "On the Protection of Competition",

DECIDED:

1. The company "Taci Oil International Trading" Sh.A. shall provide the information pertaining to the period 1 January - 31 December 2007 and as listed below:

- a) The purchase price, expressed in USD or another currency (as it applied) and shown in the relevant invoices.
- b) The amount of hydrocarbons, specified whether Diezel, EuroDiesel (D1 or D2).
- c) Transport expenses, where should be specified whether a company vehicle, or a rented vehicle was used.
- d) Any other expenses, to include the cost applied by the customs office at the moment of importing. These data must be expressed in the currency that had been applied, as well as the equivalent in Albanian Lek, at the exchange rate that applied, which must also be stated.

- e) The reference price applied, expressed in absolute value, therefore not simply stating an answer of the type “Yes” or “No”, but also stating exactly the absolute value.
- f) The exchange rate that was applied for each customs declaration. Specify the value in cases when the applied rate was different from the monthly exchange rate applied by the customs,
- g) Customs payments shown in detail for each type of payment (excise tax, carbon tax, VAT, etc.).
- h) Value of duties as represented in the financial balance sheet for the period 01. 01. 2007 - 31. 12. 2007 (in detailed form, according to the types of duties paid).
- i) The situation of hydrocarbons at the beginning of 2007 and at the end of the year 2007, for each type of hydrocarbon product that had been imported, as well as the total. The data concerns the amount and the value, according to the balance sheet.
- j) The data required under paragraphs 8 and 9 should be provided also for your company, which is vertically integrated (sh.p.k.).
- k) State what has been the amount sold for each type of hydrocarbons, by specifying the amount and the values, at the beginning and at the end of the year 2007.
- l) The reports of the re-evaluated tax obligations for the period 1 January–31 December 2007.

2. The final deadline for the submission of the information stated above at the premises of the Competition Authority is the date 04 May 2009.

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

**Arguments in support of the vote against Decision No. 107, dated 23. 04. 2009,
adopted by the Competition Commission, titled: “On request of information from
company Taci Oil International Trading sh.a.”**

The vote expressed against this decision is mainly based on the fact that such decision has followed an entirely erroneous procedure. More specifically:

The purpose of the aforementioned decision is to compel the aforementioned undertaking to provide the information listed in the decision. If the undertaking fails to provide the information, it shall be penalized according to Article 73 of the Law “On protection of competition”.

Although in principle, the provision of information required by the Competition Authority by the entities is obligatory, based on the Law, the aforementioned decision has lost its meaning, because it is adopted a long time after the investigation concerning the relevant undertakings, to include “Taci Oil” has been declared concluded by the Secretariat of the Competition Authority, which is the only body entitled, by law, to perform investigations that concern competition. *(See the official notification issued by the Competition Authority “The Competition Authority issues the Report “On in-depth investigation in the Hydrocarbons Market” and invites the undertakings to attend a hearing session”, published also in the official web page of the Competition Authority on 16. 12. 2008).*

The parties are invited to attend a hearing session to be heard, i.e. to express their opinions and claims, and not to be penalized based on the claims of the commissioners. The Secretariat had had all the time necessary to request information based on a decision of the Commission, in the sense expressed above, if the provision of such information had not been fulfilled in the usual manner by the undertakings, during the time when the investigation was ongoing.

After the conclusion of the investigation by the working group and the submission of the report to the Commission for decision-making, the investigation may reassume of be completed only by a special decision adopted by the Commission, and that is in case when it is noted that the investigation has not achieved its objectives. Only under these conditions may start the requirement of information to complete the investigation based on the tasks assigned through the decision of the Commission. In such situation, the working group may start its work from the beginning, to include the requirement of information through a decision of the Commission, in case the undertakings decline to provide such information.

Furthermore, the information listed in the aforementioned decision and required to be provided, do not bring nothing new to assist the Commission in rendering a judgment on whether the undertakings have abused or not by coordinating their behavior, as it is stated in the report prepared by the Secretariat.

The aforementioned decision creates a great confusion with the procedures that need to be followed in the course of investigations of economic entities, from the start to the conclusion, in the way the law is implemented and the correct behavior towards the undertakings that are being investigated. [The aforementioned decision] constitutes a bad precedent for the future activity of the Competition Authority.

For these reasons, as well as for other reasons expressed during the meeting of the Commission, I have declared my vote against this decision and require that this explanation is attached to the aforementioned decision.

Tirana, 23. 04. 2009

Lush Perpali
Deputy Chairman