



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

DECISION

No. 140, date 10.03. 2010

“For temporary measures taken in the market of loading/unloading services and liquid gas deposits”

Competition Commission represented by:

Lindita	MILO(LATI)	Chair
Servete	GRUDA	Member
Koço	BROKA	Member
Rezana	KONOMI	Member

During the meeting held on 10.03.2010 went over the case with:

Objective: Review of the team’s work on measures to take in the markets of loading/unloading services and liquid gas deposits.

Legal Framework: Law no.9121, dated 28.07.2003 “For the protection of competition” article 24d and article 44.

Competition Commission after reviewing the reports of the Secretary General and that of the task force on the limitations of competition in the markets of loading/unloading service and liquid gas deposits, listened to both parties during the meeting held on 10 March 2010, and

OBSERVED THAT:

Given the concerns expressed by some media and complaints from some operators that conduct activities of import and wholesale trading of liquefied petroleum gas (LPG) about competition in this market the Secretary General of the Competition Authority took the decision no. 1, dated 02.17.2010 "For the opening of preliminary investigation in the markets of loading/unloading service and storage of liquid gas. These concerns have been raised through letters to the Ministry of Economy, Trade and Energy, No. 81, dated 02.12.2010 and No. 102 dated 25/02/2010.

Competition Commission, in implementing the above decision and pursuant to sections 35 and 36 of the Law "On protection of competition », gave the task

force inspectors, Inspection Authorization No. 85, dated 17/02/2010, to perform inspections on enterprises involved in the markets of loading/unloading service and those of liquid gas storage.

Following investigation, the Competition Authority's inspectors, announced and made available to the concessionaires on 02/03/2010, decision no.1 of the Secretary General of the Competition Authority, dated 17/02/2010 who based on Articles 35 and 36 of Law no. 9121, dated 28.07.2003 "On protection of competition" carried out an inspection at the central offices of the company La Petrolifera Italo Albanese "SH.A.

Port "Vlora-1" has been granted with concession by the state to the company "La Petrolifera Italo Rumena" SPA, through Law no. 9231, dated 13/05/2004, "On the ratification of the "BOO" concession agreement form, for the construction and use of the coastal terminal in the Vlora bay for storage of oil and its derivatives", and "for the ratification of the "BOT" concession agreement form for the construction and use of port infrastructure to service the coastal terminal in Vlora Bay"

Referring to Article 3 of the Concession Agreement, the terminal is designed and will function as an independent terminal service, open to all qualified operators; particularly in the oil industry .The concessionaire is not allowed to conduct business activities for oil, gas and their derivatives.

Under Article 5, Section 7 of this Agreement, during the term of the concession, the concessionaire is obliged to perform the appropriate services related to deposits and the handling (loading and unloading in land or sea) of oil products and liquid petroleum gas for any licensed national or international operator interested in operating with a superior independent terminal.

Referring to Article 8 of this Agreement, the concessionaire is entitled to "be the only entity in the entire Bay of Vlora area (including the marine area and marine platforms, if any), to whom it is allowed to build a terminal and use the coastal and port infrastructure, including platforms at sea, as well as the only entity equipped with the right store and process (loading and unloading) (from within and from outside, from the ground and the sea) oil, petroleum products, liquefied gas products and other liquid products.

During the inspections, the company's representatives stated that they are currently building two gas fields for storage of 2450 m³ capacity each but for usage up to 2000 m³ for security reasons. Both these fields are given to "Kalaja" SH.A (which is involved in the import and trade of LNG) and the other importing enterprises will need to first contact "Kalaja" SH.A for gas removal service. Based on the above fact there has been a verbal note created on 02.03.2010, "On receiving an explanation for the facts and documents relating to the objective and purpose of the investigation."

During the inspection procedure the following were administered as well : a copy of the contract "for services of storage and processing of liquid products" signed by "La Petrolifera Italo Albanese" SH.A and "Kalaja"SH.A ; Annex. 1, dated 23/06/2009 together with attachment "A", dated 29/08/2008. There was also a request from "Kalaja" SHA to La Petrolifera Italo Albanese where the latter was urged to discharge a ship of gas on behalf of " GLOBAL GAS " SHA with all the contractual obligations charged to "Kalaja " SHA. For the performance of this inspections and for the gathering of the above evidence there were a couple verbal notes dated 02.03.2010 " For the inspection of enterprises ".

Relevant Market

Markets for loading/unloading and storage of hydrocarbons services
This market functions as a liberalized market in terms of import / export by ship of oil, gas and their derivatives. This is carried out only through two oil ports in the areas of the former Soda plant in Vlora Bay and in the area of Porto Romano, Durres, ports that are built and operate on the basis of concession agreements respectively with LA PETROLIFERA ITALO ALBANESE" SHA and "Porto Romano" SHA reserving exclusive rights for this service..

According to the General Department of Customs,55% of the total imported liquefied gas is deposited and removed in Port "Vlora - 1", the remaining 45% is deposited and removed in Porto Romano, Durres, and only 1% is deposited and imported through land.

Legal Assessment

From the legal assessment it results that the company "LA PETROLIFERA ITALO ALBANESE" SHA has been given through concession agreements exclusive exploitation and building permit in the coastal terminal and infrastructure, as well as exclusive rights to deposit and process the liquefied gas.

From the review of the contract between the company "LA PETROLIFERA ITALO ALBANESE" SHA and enterprise "KALAJA" SH.A as well as Annex 1(23/06/2009) together with Attachment "A"(29/08/2008), it results that the company "LA PETROLIFERA ITALO ALBANESE" SHA has made available to the company "KALAJA" SH.A all its capacities relating to liquid gas storage as well as the plant's loading and unloading capacities, limiting the possibility of other importers to unload and store this product.

Deposits and LPG pipeline networks which are part of the system of loading and unloading and LPG's storage represent an "essential facilities" (Essential Facility), to conduct this activity as:

- Enterprises that import LPG find it vital to have access to this infrastructure in order to compete in the market. This access should be provided on the basis of Article 5, Section 7 of the concession Agreement for any interested national or international licensed operator.

-Under Article 8 of the Concession Agreement, the terminal and port area are exclusively designated as the only coastal infrastructure for the storage and processing (loading/unloading), from inside and outside, through land or sea of liquid gas products and other liquid products in the Vlora Bay.

Through the contract with "KALAJA" SHA "For the storage and handling of liquid products" LA PETROLIFERA ITALO ALBANESE" has restrained other operators from the import and wholesale trade of LPG as all the "essential facilities" were exclusively awarded to "KALAJA" SHA which is primarily involved in the wholesale trade of liquefied petroleum gas.

Currently, from the inspections carried out and the reviewed documentation, it results that " KALAJA" SHA is the only enterprise which preserves the right to unload and store its product in the storage areas under ownership of "LA PETROLIFERA ITALO ALBANESE" SHA.

This contract, which on the basis of law no. 9121 "For the protection of competition", presents a vertical agreement, might bring about limitations of competition in the LPG import markets as it does not offer other companies the chance to operate in the same market by unloading and storing their product. This situation has eliminated all the competitors of "KALAJA" SHA in this market segment.

In conclusion, due to the potential of irreparable damage to competition and non-compliance with article 9, clause 2 of the law "For the protection of Competition"

The Competition Commission, on the basis of article 24d, article 44 of Law no. 9121, dated 28.07.2003 "For the protection of competition"

DECIDED:

1. To take the following temporary measures:

- 1.1 The immediate obligation, not later than five days from notice of the company "LA PETROLIFERA ITALO ALBANESE" SHA, to provide anchoring, removal, handling and storage of LPG's in their terminal, for every interested national or international licensed operator.
 - 1.2 Notification of Competition Authority for an exemption from the prohibition by the Competition Commission decision of all Concession agreements of "LA PETROLIFERA ITALO ALBANESE" pursuant to sections 6 and 49 of Law no. 9121 "For the protection of competition"
2. The temporary measures will be in effect until the end of the investigation period.

3. Non-observance of the temporary measures cited in section 1 of this decision there will be a penalty of 2-10% of annual turnover for violation of competition laws based on article 74, section 1b of law no. 9121 "For the protection of competition".
4. In the event of default to observe these measures within the deadlines set forth in this decision, the Competition Commission, based on article 76 of law no. 9121 "For the protection of competition", may chose to impose periodic penalties on 5% of the average daily turnover of the preceding fiscal year until "LA PETROLIFERA ITALO ALBANESE" takes action to observe the rules of this decision.
5. The Secretary General is assigned to notify the enterprises "LA PETROLIFERA ITALO ALBANESE" SHA and "KALAJA" SHA of this decision.
6. This decision is enforced immediately.

COMPETITION COMMISSION

Servete GRUDA

Koço BROKA

Rezana KONOMI

Member

Member

Member

Lindita MILO(LATI)

CHAIR