



GAMBIA COMPETITION & CONSUMER PROTECTION COMMISSION

Leveling the Field for Development

13th March 2024

DIRECTIVE /DR/01/2024

SUBJECT: REFUSAL TO DEAL AND PREFERENTIAL TREATMENT

APPLICANT: THE GAMBIA COMPETITION AND CONSUMER PROTECTION
COMMISSION

RESPONDENT: GAM PETROLEUM STORAGE FACILITY COMPANY LIMITED

PARTIES: THE GAMBIA COMPETITION AND CONSUMER PROTECTION
AND GAM PETROLEUM STORAGE FACILITY COMPANY LIMITED

BEFORE: COMMISSIONERS

1. Yassin Senghore - Chairperson
2. Foday Ceesay - Commissioner
3. Hamidou Jawara - Commissioner
4. Yusupha Kah - Commissioner
5. Abdou Touray - Commissioner

ISSUE FOR CONSIDERATION

The issue for consideration before this Commission, is whether GAM PETROLEUM STORAGE FACILITY COMPANY LIMITED was engaged in any act of refusal to deal or preferential treatment in the allocation of storage/ullage service to Oil Marketing Companies and importers in the year 2023?

DIRECTIVE

In 2024, the Secretariat concluded its investigation as required under section 15(b) of the Competition Act into the alleged refusal to deal by Gam Petroleum Storage Facility Company Limited and preferential treatment for APOGEE in the Automotive Gas Oil (AGO) storage allocation. The investigation was informed by a complaint registered on 11 September 2023 alleging unfair treatment against ORYX Energies Gambia Limited and other market participants.

The investigation revealed that Gam petroleum Storage Facility Company Limited holds 63.40% of the market share in the supply of ullage or storage service for Automotive Gas Oil. In accordance with section 31(1) of the Act¹, holding 63.40% of the market share in the supply of storage or ullage service in The Gambia indicates a significant monopoly situation in that relevant geographic market.

Where the Commission has reasonable grounds to believe that an enterprise in the monopoly situation is engaging in conduct that has the object or effect of preventing, restricting or distorting competition, the Commission is mandated by section 31(2) to conduct an investigation. It was against this backdrop that the investigation was undertaken.

By a letter dated the 11th September 2023 ORYX submitted a complaint to the Commission alleging that it was refused allocation for ullage/storage as well as treated unfairly.

The Secretariat of the Commission investigated the allegations made against Gam-petroleum by ORYX ENERGIES. An investigation report was submitted to the Commissioners.

On 8th of March 2024, at a Board meeting, Commissioners reviewed and analysed the evidence in the investigation report. Commissioners noted a monopolistic abuse on a trend of refusal to provide storage to ORYX, Sandelle, Jah Oil and Tech World. Notably, evidence of preferential treatment for APOGEE was also observed. APOGEE was on 11th and 12th September 2023 granted ullage or storage service for 11000 metric tons and 6000 metric tons after denying ORYX

¹ Section 31 (1) of the Competition Act 2007 provide for a monopoly situation to exists in relation to the supply of goods or services of any description if – thirty per cent or more of those goods or services are supplied, or acquired, by one enterprise.

ENERGIES Gambia Limited. This conduct was done at a moment when ullage facility of up to 36, 000 metric tons was exclusively reserved for APOGEE.

These unlawful anti-competitive practices have the potential to distort competition in the form of creation of technical barriers to entry and expansion in the importation of AGO into the country. This can lead to shortage of AGO. Further it has the effect of putting the Country's option for the supply of AGO into a basket hindering the ability to operate effectively leading to economic loss and eventual market risk.

In view of these anti-competitive conducts of Gam Petroleum Storage Facility Company Limited which is in contravention of section 31 of the Act, the Board of Commissioners unanimously resolved and direct as follows:

That Gam Petroleum Storage Facility Company Limited shall –

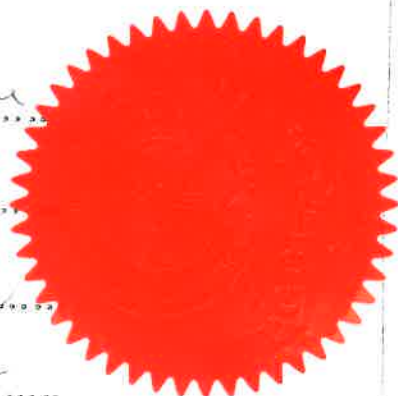
1. immediately desist from denying ORYX ENERGIES Gambia Limited and other importers from accessing ullage when it exists;
2. allow Oil Marketing Companies and importers to store petroleum products at the facility in an equitable, transparent and non-discriminatory manner in accordance with section 9(2) of the Petroleum Products (Storage Facility) Regulations, 2020;
3. terminate and desist from any existing preferential relationship with APOGEE and treat Oil Marketing Companies and importers equally without discrimination in the allocation of ullage; and
4. desist from current and future anti-competitive practice.

Take note that, the Commission shall continue to review and monitor compliance with the directives in accordance with section 54 of the Competition Act. Failure to comply with the directives shall lead to enforcement of same in accordance with section 55 of the Act.

SIGNED BY COMMISSIONERS-

1. Ms. Yassin Senghore
2. Mr Foday Ceesay
3. Mr Abdou Touray
4. Mr Yusupha Kah
5. Mr Hamidou Jawara

Yassin Senghore
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Foday Ceesay
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Hamidou Jawara
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Dated this.....*2nd*.....day of March 2024