



REPUBLIC OF ALBANIA
-THE COMPETITION AUTHORITY-
The Competition Commission

No. ___ Prot.

Date : 23/09/2009

DECISION

No. 124, Dated 23/09/2009

“On

Some recommendations on the document of the Authority of Electronic and Postal Communications, titled: “Analysis of mobile telecommunications market: Wholesale termination markets and retail market of mobile public services ”

The Competition Commission, in its meeting held on 23.09.2009, with the participation of:

- | | |
|----------------------------|------------|
| ▪ Mrs. Lindita Milo (Lati) | Chairwoman |
| ▪ Mrs. Servete Gruda | Member |
| ▪ Mr. Koço Broka | Member |
| ▪ Mrs. Rezana Konomi | Member |

Discussed the following issue:

Subject: Review of the document submitted by of the Authority of Electronic and Postal Communications, titled: “Analysis of mobile telecommunications Market: Wholesale termination markets and retail market of mobile public services ”.

Legal basis : Law No. 9121, dated 28.07.2003, titled “On the Protection of Competition”, as amended, Article 24, letter “f”, and Article 70, paragraph 2.

The Competition Commission, upon reviewing the document submitted by of the Authority of Electronic and Postal Communications, titled: “Analysis of mobile telecommunications Market: Wholesale termination markets and retail market of mobile public services ”, as well as the report presented by the Secretary General,

NOTED THAT:

The Authority of Electronic and Postal Communications (herewith referred as AEPC), submitted Requisition No. 312, dated 29.07.2009 to the Competition Authority, requesting the opinion of the latter on the Decision No. 748 adopted by AEPC, titled "Analysis of mobile telecommunications Market: Wholesale termination markets and retail market of mobile public services: Public Consultation", especially with regard to the problems connected with the retail market.

From the analysis of the aforementioned document results the following:

- 1) The main change in the Mobile Telephony Market during the period of time that is object to the analysis by AEPC, is the 'de facto' entry in the market of the third operator, with a license owned by Altelecom Sh.A , as part of the privatization packet of this company.
- 2) AEPC has granted the fourth mobile phone operator GSM, Mobile 4 Al, the right to use for 15 years the frequency band E-GSM and GSM 1800.
- 3) In the mobile market there are still barriers to market entry of network operators, while there exist legal obstacles for independent providers of retail mobile services or MVNO; currently there is **no entry in the market**.
- 4) AEPC estimates that Tariff Adjustment Methodologies for Operators with Significant Market Power (OSMP), adopted last year have been implemented starting from the date September 8, 2008, by Vodafone Albania, and 15 September 2008 by AMC and Altelecom.
- 5) The scope of regulation of mobile phone tariffs are the tariffs of national and international phone calls **only** for prepaid users.
- 6) Reduction of fees is expected to continue as AEPC has started a project to assess the costs BULRAIC of Mobile operators, with the assistance of an international consultant. AEPC considers that theregulation of termination tariffs of mobile operators, should be performed for the period 1.09.2009 - 31.08.2010

AEPC reaches several conclusions, and among those that regard market competition, the following are stated:

- I. **The existence of the possibility of coordinating behavior by Vodafone-AMC**
 1. The market remains highly concentrated despite the entry of the third competitor and similar parts of AMC and Vodafone Albania markets in years are indicators of the symmetry between the operators and incentives for coordinated action.

2. Entry into the market of "Eagle Mobile" in March 2008, appears to have no influence on the income and profits of AMC and Vodafone, which in 2008 had net profits at levels much higher than in previous years and at almost the same levels with each-other.
3. For years 2007-2008, results that the total income of mobile operators are increasing at levels comparable with previous years, while net profit of AMC and Vodafone Albania in 2008 has increased significantly compared with 2007: 77% for Vodafone and 54 % for AMC.
4. In conclusion, AEPC concludes that "the high rates and stable profit made by AMC and Vodafone Albania, are indicators of low competition and represent incentives for coordination between these two companies.

II. Addressing of the recommendations made by the Competition Authority

In the analysis made by the AEPC is stated that during the period 2007 - 2009 are taken into account all the recommendations given by the Competition Authority through Decision No. 61, dated 21.11.2007 "On some recommendations in the mobile telephony market ". AEPC states that are implemented all recommendations made by the Competition Authority with regard to the market liberalization, the application of the methodology of tariff regulation and amendment of Law no. 8681 to bring it in line with EU directives, with the exception of number portability. Even for that, i.e. the portability of numbers, AEPC has recently published a document for public consultation.

III. In the analysis, AEPC seeks the opinion of the Competition Authority on the perceived inadequacy of the Law Nr. 9121 "On protection of competition" to appropriately address market failures that are taken into consideration.

Pursuant to Law 9121, dated 28.07.2003 "On protection of competition, the Competition Authority intervenes mainly on an ex-post basis. But this law itself recognizes the Competition Authority the right to intervene ex-ante, which is expressed with the relevant recommendations.

The Law "On electronic and postal communications in the Republic of Albania" has given all the attributes to the regulatory entity that, in its ex-ante analysis of market failures, can take all the appropriate measures to establish the competition, in cooperation with the Competition Authority. Therefore, we can not assume that the Law "On protection of competition" is insufficient to address the market failures taken into consideration.

The Competition Authority expresses its regard on the work done by AEPC in drafting this market analysis, the conclusions drawn and proposals made for further intervention in the administrative regulation of electronic communications market presented in the document titled: "Analysis of mobile telecommunications Market: Wholesale termination markets and retail market of mobile public services " .

FOR THE ABOVE REASONS:

The Competition Commission, pursuant to Article 24, letter “f”, Article 70, paragraph 2, of the Law No.9121, dated 28.07.2003, titled “On the Protection of Competition”, as amended, and upon proposal of the Secretariat,

DECIDED:

To recommend AEPC:

- I. Application of tariff regulation methodology not only for prepaid service, but also for: contracted service; electronic messages (SMS) and other services.
- II. Application of "Methodology of Adjustment of Termination Tariffs " until mobile tariffs are comparable with the average tariffs applied to EU countries.
- III. The granting of a new license in the mobile telephony market, should be accompanied with all measures necessary **to make effective as soon as possible the fourth operator** with a view to increasing competition in the market.
- IV. Regarding the concern expressed by AEPC that “there are signs of lack of competition in the mobile market”, the Competition Authority requires that after the approval of the final report by the Steering Committee of AEPC, all elements, evidence and facts that are owned by the Regulator, in support of Article 61, paragraph 2 of the Law "On electronic communications" should be submitted to the Competition Authority for the purpose to monitor and investigate the relevant markets.

This decision takes effect immediately.

THE COMPETITION COMMISSION

Servete Gruda

Rezana Konomi

Koço Broka

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(_____)

Member

Member

Member

Lindita Milo (Lati)

CHAIRWOMAN