



REPUBLIC OF ALBANIA
-THE COMPETITION AUTHORITY-
The Competition Commission

No. _____ Prot.

Dated 23.11.2009

DECISION

No. 130, dated 23.11.2009

“On some recommendations the report ‘Analysis of fixed telephony market: Retail markets for access and telephone calls from fixed locations and wholesale markets of termination, origination and transitioning in fixed networks: Public consultation’, issued by the Agency of Electronic and Postal Communications (AEPC)

The Competition Commission, at its meeting held on 23 /11/ 2009, with the participation of:

Mrs. Lindita MILO (LATI)	Chairwoman
Mrs. Servete GRUDA	Member
Mr. Koço BROKA	Member
Mrs. Rezana KONOMI	Member

Addressed the following issue:

Subject: Review of the report ‘Analysis of fixed telephony market: Retail markets for access and telephone calls from fixed locations and wholesale markets of termination, origination and transitioning in fixed networks: Public consultation’, issued by the Agency of Electronic and Postal Communications (AEPC)

Legal basis: Law No. 9121, dated 28.07.2003, titled “On the protection of competition”, Article 24, letter ‘f’, and Article 70, paragraph 2.

The Competition Commission, upon reviewing the following documents:

- The report titled ‘Analysis of fixed telephony market: Retail markets for access and telephone calls from fixed locations and wholesale markets of termination, origination and transitioning into fixed networks: Public consultation’, and issued by the Agency of Electronic and Postal Communications (AEPC)
- The report prepared by the Secretariat of the Competition Authority.

NOTED THAT:

- I. The Competition Authority, pursuant to the relevant legislation, and the memorandum of understanding between the Competition Authority and the Agency of Electronic and Postal Communications has been focusing in several key themes addressed in the report titled: “Analysis of fixed telephony market”, with the view of contributing in delivering recommendations that aim at increasing effective competition in the fixed telephony market.
- II. The findings resulting from the review of this report are the following:
 - 1) Altelekom has over 80% of the customers and the outgoing telephonic calls, and over 90% of the revenues. Despite the fact that the market share of Altelekom has been reduced (thought at a very slow pace), this company still owns over 50% of the market since several years:
 - 2) A company is assumed to hold a dominant position in the market if its market share has been sustainable for a considerable period of time. Referring to all the precedent cases analysed by the European Commission, a market share of 50% is an indisputable indicator of the existence of dominant position in the market.
 - 3) The legal changes have granted the Alternative Operators the opportunity to build and maintain local networks and to offer public telephone services. However, despite this fact the entry of alternative operators in the retail telephony market has a high cost. This circumstance, however does not exclude the possibility that Altelekom, despite its large market share, be confronted with competition of other operators.
 - 4) Altelekom has changed the tariffs in implementation of the methodology for the tariff regulation adopted through DCM No. 854, dated 18.06.2008, which shall be adopted during a two-year period of time.
 - 5) Although the methodology for the tariff regulation is in effect since over two years, it can be observed that in the fixed telephony market exists an ineffective competition that results from the tariffs applied by Altelekom. These tariffs result higher for some services and lower for some other services, if compared to the level of tariffs that would result if an effective market competition would exist. The application of these tariffs constitutes a problem not only for Altelekom subscribers, but also for other competitors in the market.
 - 6) Although the approval of the new reference bids by Altelekom (RIO) has reduced the scope of problematic associated with interconnection services, there are still problems with other services that could be considered as “abuse with dominant position” such as: “delays and/or refusal to give network access for interconnection services”, “application of discriminating conditions between various operators”, and “application of unfair conditions in granting interconnection access”. The report does not state clearly what are specifically those types of behaviour that have been observed and that constitute abuse with dominant position.
- III. From the analysis of the legal framework results that:

1. Referring to Law No. 9121, dated 28.07.2003, titled “On the protection of competition” the Competition Authority can intervene ex post. However, the law confers to the Competition Authority the right to intervene ex ante, and on such cases, the Authority provides recommendations. Pursuant to Article 69 of the Law No. 9121, dated 28.07.2003, titled “On the protection of competition”, the Competition Authority reviews all the drafts of normative acts that may impact market competition. Under paragraph 2 of the Article 70 of the same law, the Competition Authority, in the observation of the public interest makes an assesment of the regulations of competition, to include the economic and administrative regulations, by issuing relevant recommendations.
2. Under paragraph 3 of Article 70 Law No. 9121, dated 28.07.2003, titled “On the protection of competition” and Article 38 of Law No. 9918, dated 19. 05. 2008, titled “On Postal and Electronic Communications in the Republic of Albania” are foreseen the cases of cooperation between the Competition Authority and the Authority of Electronic and Postal Communications even in the cases of ex ante interventions by the former.
3. Law No. 9918, dated 19. 05. 2008, titled “On Postal and Electronic Communications in the Republic of Albania” has granted all the rights to the regulatory entity to undertake such measures for the restoration of competition in the market that result from the ex-ante analysis on market failures. Such measures would be taken in cooperation with the Competition Authority . The law on Competition has as its object the prohibited agreements, abuse with dominant position and control of concentrations.
4. The Competition Authority expresses its appreciation for the continuous cooperation with the the Authority of Electronic and Postal Communications (AEPC) and its work on market analysis, the proposals regarding the further administrative improvements in the electronic communications market.

FOR THE ABOVE REASONS:

The Competition Commission, pursuant to Law No. 9121, dated 28.07.2003, titled “On the protection of competition”, Article 24, letter ‘f’, and Article 70, paragraph 2, and upon the proposal forwarded by the Secretariat,

DECIDED:

- I. To recommend to AECP the following:
 1. To continue with the application of the ‘Methodology for tariff regulation’ up to the point when the tariff for national calls shall become comparable to the average level of the tariffs applied in the countries in the region and those that are members of the European Union.
 2. The full regulation of the tariffs applied by Albtelekom, by increasing the tariffs that are below cost and increasing the tariffs that are above the average of the region, by orienting them towards cost, in a way to make possible an effective competition between the operators.

3. Upon the assesment of costs of Albtelekom on the basis of BULRAIC model, the Authority of Electronic and Postal Communications (AEPC) should balance out the tariffs applied by Albtelekom and orient them towards cost. This would avoid, on one hand, offering of service below cost that eliminate market competition, and on the other hand would tend to reduce some tariffs that maybe exaggerated and are several times higher than those applied in the other countries in the region and/or EU member countries.
- II. To request from the Authority of Electronic and Postal Communications that on the basis of Article 70 of the law “On the Protection of Competition” and Article 33 of the law “On Electronic Communications” to make available to the Competition Authority all the documentation in its possession concerning eventual abuse with dominant position by Albtelekom Sh.A in the fixed telephony market, as described in the text abovefacilitate subsequent steps in the implementation of law “On the Protection of Competition”, as amended.
 - III. The Secretary General is in charge to ensure the implementation of this decision.

THE COMPETITION COMMISSION

Servete Gruda

Koço Broka

Rezana Konomi

(_____)
Member

(_____)
Member

(_____)
Member

Lindita Milo (Lati)

CHAIRWOMAN