



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

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**D E C I S I O N**

**No. 59, Dated 09. 11. 2007**

**On**

**“Abuse of dominant position in the Mobile Telecommunications Market, by Albanian Mobile Communication sh.a. and Vodafone Albania sh.a.”**

The Competition Commission, on its meeting held on 09. 11. 2007, with the participation of:

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

Discussed the following issue:

**Subject:** inquiry on the existence or non-existence of abuse of dominant position in the mobile telecommunications market, by Albanian Mobile Telecommunication sh.a. and Vodafone Albania sh.a., or any other restrictions of competition in this market.

**Legal basis:** -Law No. 9121, dated 28.07.2003, titled “On Protection of Competition”, Articles 8, 9, Article 24, letter “d”, Article 74, paragraph 1, letter “a” and Article 75, paragraph 1.

-Code of Administrative Procedures.

Undertakings under examination:

- Albanian Mobile Communication sh.a (herein referred as AMC), with headquarters at the following address: Rr.”Gjergj Legisi” Laprakë, Tirana.
- Vodafone Albania sh.a. with headquarters at the following address: European Trade Center Blv.”Bajram Curri” Kt. 11, Tirana (herein referred as Vodafone).

The Competition Commission, upon review of,

- The Report of the Working Group for “In-Depth Investigation in the Mobile Telecommunications Market”,
- Declaration of the parties, made during the Hearing Sessions held, respectively, on 07.06.2007 with AMC; and on 13.06.2007 with Vodafone.

## **N O T E D T H A T:**

### **I. Fields of Application for Law on Competition**

1. The Law “On Protection of Competition” is applied for those undertakings, or groups of undertakings, which, either directly or indirectly, impact or may impact the market and that operate in the territory of the Republic of Albania (Article 2 of Law No. 9121, dated 28.07.2003, titled “On Protection of Competition”). AMC and Vodafone offer mobile telecommunications services in the territory of the Republic of Albania and, based on Article 3, paragraph 1 of the Law “On Protection of Competition”, are qualified as “undertakings”. As a result, the activity of these two undertakings is subject to Law No. 9121, dated 28.07.2003, titled “On Protection of Competition”.

### **II. The issue under consideration**

2. The in-depth investigation was launched in relation to the mobile telecommunications public services, offered by two service providers, AMC and Vodafone.
3. The mobile telecommunications market was created on May 1996, with the licensing of AMC company (License No. 1) and the subsequent start of its operations.  
On 25.07.2000, Telenor - Cosmote company acquired 85 % of the AMC shares, 12.6% of the shares is owned by the Albanian State, and administered by the Ministry of Economy, Trade and Energy of the Republic of Albania, while 2.4% of the shares are owned by small shareholders, who were employees of AMC at the rime of the privatization.
4. On 9 June 2001, Vodafone company was the second licensed operator in the mobile telecommunications market (License No. 2), with 51% of common capital shares owned by Vodafone International Holding, and 49% owned by Panafone International Holding.
5. On 1 March 2004, the third operator in the mobile telecommunications market, Eagle Mobile company was licensed (License No. 3). Eagle Mobile was 100% owned by Altelekom sh.a. During the period of investigation by the Competition Authority, Eagle Mobile has not been exercising any economic activity in the market.
6. In these conditions, only two undertakings have been operating in the mobile telecommunications market during the investigation period, i.e. AMC and Vodafone.

### **III. Investigation Period**

7. The investigation period in the mobile telecommunications market comprises the period 2004-2005.
8. For the purpose of analyzing the behaviour of the undertakings under consideration during a larger period of time, the Competition Authority has analyzed the mobile telecommunications market for the period 1996-2005.

### **IV. Investigation Procedures**

9. The investigation procedures are based in Chapter III of Law No. 9121, dated 28.07.2003, titled “On Protection of Competition” and the Code of Administrative Procedures.
10. On September 2005, the Competition Authority, on its own initiative, launched an investigation in the Mobile Telecommunications Market. The trigger for taking this step was growing concern of the public opinion for the high prices applied by the operators in the Mobile Telecommunications Market. Such concern was publicly expressed in the media, mainly by associations and institutions engaged with the protection of consumer rights (the Association for the Protection of Consumers, the Ombudsman, etc.) The same concern had been also stated in the Recommendations provided by the International Union of Telecommunications (ITU)<sup>1</sup>.
11. Upon reviewing the documentation made available by the Secretariat and the explanations presented by the two operators in the market, AMC and Vodafone, rendered its judgment based on available evidence by concluding that there could be restrictions of competition in the market.
12. Upon its Decision No. 21, dated 11.10.2005, the Competition Commission resolved to “Launch an in-depth investigation procedure in the mobile telecommunications market, in general, and with a particular focus on the undertakings AMC sh.a and Vodafone sh.a, in relation with the inquiry on the existence or non-existence of abuse of dominant position [by these undertakings], or any other restrictions of competition in this market.”
13. Upon Decision No. 21, dated 11.10.2005, of the Competition Commission, the Secretariat has carried on the investigation proceedings pursuant to Law No. 9121, dated 28.07.2003, titled “On Protection of Competition” and the Code of Administrative Procedures. Upon conclusion of the investigation, the Secretariat has submitted to the Competition Commission the “Report on In-Depth Investigation”. Pursuant to Article 47 of the Code of Administrative Procedures, copies of this Report, omitting confidential information respective to the other undertaking, have been made available to the undertakings under investigation, i.e. AMC and Vodafone.

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<sup>1</sup> “...The Telecommunications Regulatory Entity must review the interconnection agreements, entered, respectively, between Albtelekom and AMC, and, Albtelekom and Vodafone, because these agreements are in breach of the Telecommunications Law and harm public interest...”

14. Pursuant to Article of Law No. 9121, dated 28.07.2003, titled “On Protection of Competition”, the undertakings have expressed their opinion on the Report on In-Depth Investigation, during the hearing sessions held, respectively, on 07.06.2007 with AMC; and on 13.06.2007 with Vodafone.

**V. Relevant market**

15. Pursuant to Article 3, paragraph 7 of Law No. 9121, dated 28.07.2003, titled “On Protection of Competition”, the relevant market is composed of “products, that by reason of their characteristics, price and intended use, are considered as substitutes by consumers or clients, and that are supplied by the undertakings under the same competition conditions and in a geographical area that is separated from the other neighbouring geographical areas.” The relevant market comprises both the product market and the geographical market.

**V.A. The relevant product market**

16. The relevant product market is the public service of mobile telecommunications, or the transmission of phone calls to the end user (either generated by the end user, or destined for the end user), offered by each of the mobile telecommunication companies, AMC and Vodafone,
17. In the definition given above, the mobile telecommunications services comprise only voice telephony.
18. Fixed-line telephony can not be included in this market because it has specific characteristics, different from mobile telephony. From the consumers’ standpoint, the fixed-line telephony service is not a substitute to the mobile telephony services; therefore the mobile telephony market is distinct from the fixed-line telephony market.
19. The mobile telephony user is enabled to utilize this service despite his/her physical location<sup>2</sup> (by means of a mobile phone apparatus), at least within the territory covered by the operator to which the user is a client. The European Commission has confirmed such statement through guidelines and analyses of real-life cases<sup>3</sup>. Fixed-line telephony does not possess the capacity to enable telecommunication while in mobility, which is the essential characteristic of mobile telecommunications, and therefore it can not substitute mobile telephony. For this reason, the fixed-line telecommunication service does not partake in the mobile telecommunication market.<sup>4</sup>.

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2 Preliminary condition to make available this service is that the user of mobile telephony uses a mobile phone apparatus and has access to the service, which is realized through a SIM card provided by a mobile operator, and installed inside the apparatus.

3 In this case, the Roaming service is made available to the user. He/she can utilize the mobile telephony service in territories other than covered by the operator to which the user is a client, but that are covered by other operators, with which the operator of the user has roaming service agreements.

4 “With regard to the provision of mobile communications services, the Commission has found that, from a demand-side point of view, mobile telephony services and fixed-line telephony services constitute separate markets” (Commission guidelines on market analysis

20. The SMS service is not included in the relevant market, because it has different characteristics from the voice mobile telephony service. Both the mobile and fixed-line telephony have as specific characteristic the instantaneous conversion of acoustic waves<sup>5</sup> (sounds) produced by the calling party, into voice [sounds] received by the called party, and vice versa, and, potentially, the duration of the process is unlimited in time.<sup>6</sup> The SMS service does not have this characteristic. This service enables the transmission of limited, written information (up to 160 characters), and there is a measurable time lag between the moment of transmission and the reception of the information.
21. Relevant product market: public services of mobile telephony supplied by AMC and Vodafone Albania, and which include access of the users to the network and outgoing calls offered through prepaid or contract services.
22. The relevant market has been analyzed also on the basis of the services provided by the operators, which are: (i) prepaid, and (ii) contracted (private and business), because the impact of the market, divided into these subsections, is more significant to the competition, as well as the consumers.
23. The relevant market has been analyzed by taking into consideration call termination services, separately for each mobile telecommunications' operator, i.e. AMC and Vodafone. This market has been mainly analyzed in relation to the applied prices and their impact on the relevant market.

## **V.B Geographical market**

24. The geographical market of mobile telecommunications for AMC and Vodafone is the territory of the Republic of Albania. The respective licenses that enable AMC and Vodafone to offer their services define such territory as their geographical market in Albania.

## **VI. Assessment of dominant position<sup>7</sup>**

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and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services, OJ 2002/C 165/03, paragraph 66); case COMP/M.2574 Pirelli/Edizione/Olivetti/Telecom Italia, paragraph 33: "Mobile telephony is differentiated from fixed-line telephony, because the mobile telecommunication service, by means of radiowave technology, enables the user to satisfy communication needs while in mobility, independently from the utilization of an apparatus installed at a terminal point of the fixed-telephony network."

<sup>5</sup> Acoustic waves produced by the calling party are converted into electromagnetic waves, and again into acoustic waves. The whole process is performed at the speed of electromagnetic waves ( $\approx 300\,000$  km/sec), practically instantaneously.

<sup>6</sup> Is limited on time only in the case of prepaid mobile telephony service, and lasts as long as the amount of service time purchased by the user, and available in the recharge card.

<sup>7</sup> This disposition is based on European Law, in particular the disposition of the European Court of Justice, issued in connection with Article 82 of the European Union Treaty: "... a position of economic power that enables one undertaking to obstruct effective competition in the relevant market, by allowing it to display highly independent behaviour towards its competitors and clients, and ultimately, consumers."

25. Pursuant to Article 3, paragraph 5, of Law No. 9121, dated 28.07.2003, titled “On Protection of Competition”, the term “dominant position” means the position in the market, held by one or more undertakings, such that it makes their operations, with regard to supply and demand, independent from those of the other market participants, to include: competitors, clients or consumers.
26. The criteria for the assessment of existence of dominant position held by one or more undertakings are provided under Article 3, paragraph 5, of Law No. 9121, dated 28.07.2003, titled “On Protection of Competition”. Some of these criteria, such as market share, market entry barriers and potential competition, are central in the analysis of the dominant position.

#### **VI.A Respective shares of relevant market for AMC and Vodafone**

27. One of the fundamental criteria to determine dominant position in the market is the [respective] market share occupied by the undertakings in the product market.<sup>8</sup> The market shares are estimated on the basis of the number of subscribers, or the respective market revenue for each undertaking.
28. The estimation of market shares of AMC and Vodafone, done on the basis of the number of subscribers and the respective market revenue, produced the following evidence:

*Based on the average number of subscribers:*

-in the year 2004: AMC sh.a. had occupied, approximately, 52% of the market, while Vodafone sh.a. had occupied, approximately, 48% of the market.

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<sup>8</sup> Pursuant to the European Union Right to Competition: “... occupation by the undertakings of considerable part of the relevant product market, for a certain period of time, is very likely to be an indicator of their dominant position in the market, although such indicators alone is not sufficient to prove this assertion. The only case where such indicator is considered sufficient to make the assertion is the occupation by the undertakings in excess of 50% of the product market.

This estimation is further confirmed by the European Court of Justice, situated in Luxembourg, in the resolution of case no. 85/76, dated 13.02.1979 Hofmann-La Roche, (paragraphs 39, 41): “A dominant position may be the result of several factors, which, considered separately, may not be necessarily decisive, but among them, the existence of a large market share is very important.” “... Although the market share may differ between markets, indeed it can be stated that, with the exception of exceptional cases, large market shares constitute a proof of dominant position. This interpretation of the European Court of Justice served as the basis to determine the threshold of market share, expressed in percentage points, such that if held by an undertaking it is sufficient criteria to proof the assertion for dominant position of such undertaking. In the resolution made by the European Court of Justice in relation to case AKZO, is stated: “... Dominant Position can be presumed in case of holding a market share of at least 50%. In this case, the undertaking holding in excess of 50% of the market share must provide arguments in order to refute the presumption. (I.e. that does not hold 50% of the market, but less – our note).”

-in the year 2005: MC sh.a. had occupied, approximately, 51% of the market, while Vodafone sh.a. had occupied, approximately, 49% of the market.

*Based on revenue from call services:*

-in the year 2004: AMC sh.a. had occupied, approximately, 49% of the market, while Vodafone sh.a. had occupied, approximately, 51% of the market.

-in the year 2005: MC sh.a. had occupied, approximately, 47% of the market, while Vodafone sh.a. had occupied, approximately, 52% of the market.

29. Considering the general structure of the market, it results that during the investigation period, the undertakings AMC and Vodafone occupy 100% of the mobile telecommunications market.

## **VI.B Market entry barriers (administrative, technical and economic barriers)**

30. The mobile telephony market in Albania is regulated by the State<sup>9</sup>. The institution in charge for the regulation of the telecommunication market in the Republic of Albania is the Telecommunications Regulatory Entity.

31. Entry barriers are those factors that impede the entry of new operators in a given market. Such barriers can be of administrative, technical and economic nature.

### **Administrative barriers**

32. The number of licenses in Albania is limited, and is based on a Decision of the Council of Ministers of the Republic of Albania. (“...The Government is committed to open to the telecommunications sector to competition through the licensing of private operators. However, even after the opening to competition of this market, some services shall continue to be provided by a limited number of operators, by reason of limited natural resources, i.e. radio frequencies.”<sup>10</sup> (This condition explains the fact that this market has entry barriers of administrative nature.).

### **Technical barriers**

33. The radio spectrum is a limited natural; resource,<sup>11</sup> whilst the national radio spectrum plans, and any amendments to it, are approved by the Council of Ministers. In order to be able to operate under normal technical conditions,

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<sup>9</sup> Legal or regulatory barriers do not result from economic conditions, but rather from administrative, legal or other measures undertaken by the State, and that have a direct impact on the entry and/or the positioning of the operators in the relevant market (Recommendation by the European Commission, dated 11.02.2003, titled “On relevant product and services market in the digital communications market”).

<sup>10</sup> The Telecommunications Development Policy of the Republic of Albania, approved by Decision No. 288, dated 18.06.1999, and amended on 1999, 2001, 2002, and 2003.

<sup>11</sup> The same document as referred above, Article 69.

a licensed undertaking should have available, on average, 40-50 radio-frequencies within the 900 MHz band, and about 80-100 radio-frequencies within the 1800 MHz. Band. The European Telecommunications Network has made available to the Republic of Albania about 174 radio frequencies within the 900 MHz band, and about 384 radio frequencies within the 1800 MHz band.

### **Economic barriers**

34. Market entry barriers of economic nature are represented by the large cost of investments that potential operators need to make in order to entry the market. Such costs include the purchase of the operating license and the construction of the mobile telephony network.
35. The incumbent undertakings, i.e. AMC and Vodafone, enjoy considerable advantage in the mobile telephony market. They already have in place their networks, subscribers, management experience, brand name, as well as significant financial and economic capacity. Under these conditions, potential operators shall need considerable time and financial means before becoming effective players in the market. The number of remaining potential subscribers is relatively limited. Therefore, in order to achieve an acceptable level of competitiveness, these potential operators would have to find their subscribers among those who are already subscribers of the other two operators – a process which is difficult to realize because of the advantages of the incumbent undertakings. This process undoubtedly represents a considerable entry barrier for potential operators.
36. The fact that Eagle Mobile, the third operator licensed on March 2004 has not exercised any economic activity in the mobile telephony market during the investigation period, has been at the advantage of the incumbent undertakings, i.e. AMC and Vodafone.

### **VI.C Potential competition**

37. From the analysis of mobile telephony market results that during the period 2004-2005, the competition in this market was low. The reason is mainly the absence of other operators in the market, an absence that is due to the strong market entry barriers.

Eagle Mobile has not exercised any economic activity in the mobile telephony market during the investigation period. Therefore, this undertaking has not competed with AMC and Vodafone.

38. The stability and the upward profit trend for the operators AMC and Vodafone, lead to the conclusion that the market has not been sufficiently competitive, because competitive markets are characterized by decreasing profit trends over time of the participating undertakings.



**Table 1-- Profit indicators for AMC company, during the period 2003-2005<sup>12</sup>  
(expressed in percentage points)**

<b>Profit indicators</b>	<b>2004</b>	<b>2005</b>
EBITDA rate	57	56
Net profit rate	30.2	33.2

**Table 2-- Profit indicators for Vodafone company, during the period 2003-2005 (expressed in percentage points)**

<b>Profit indicators</b>	<b>2004</b>	<b>2005</b>
EBITDA rate	51	55
Net profit rate	18.9	26.4

#### **VI.D Economic and financial capacity of the undertakings**

39. AMC and Vodafone are two large undertakings that not only dominate the mobile telephony market, but also impact the Albanian economy as a whole. They are part of international telecommunication groups, such as Cosmote and Vodafone, listed in the international stock markets.
40. During the investigation period, AMC and Vodafone result as the companies with the highest annual turnover in Albania. Their total annual turnover in the year 2004, equal to 33 835 819 Lek, represents about 4.45 % of the Gross National Product of Albania.<sup>13</sup>

**Table 3- Annual revenues (expressed in '000 Lek)**

<b>COMPANY NAME</b>	<b>2004</b>	<b>2005</b>
AMC Revenues	16 829 067	18 319 973
Vodafone Revenues	17 006 752	19 716 893
Total Revenues	33 835 819	38 036 866

41. Profit rates (See Table No. 2) have been high, sustainable and have followed an upward trend.
42. The indicators, but also other indicators, such as the number of subscribers (this number has been continuously increasing, by reaching the figure 1,530,867 subscribers at the end of 2005), percentage of territory service coverage and population coverage, indicate the considerable economic and financial capacity of the undertakings AMC and Vodafone.

<sup>12</sup> The data are obtained from annual accounts of AMC and Vodafone, and are further elaborated by us. (EBITDA was calculated by subtracting from revenues all expenses, incurred before interest, taxes and depreciation).

<sup>13</sup> GNP (year 2004)= 752,368,000,000 Lek. Source: Statistical Report of the Bank of Albania, February 2007.

## VI.E Consumer negotiating power

43. The negotiating power of consumers in the mobile telephony market in Albania is insignificant.
44. In observing the division of the market on the basis of the services offered, it results that 97% of the customers have subscribed to the ore-paid service, while only 3% have subscribed to the contracted service (this estimate holds true both for the market as a whole, and for the undertakings AMC and Vodafone separately). The subscribers of the pre-paid service are low usage mobile users and do not possess negotiating power; the remaining part represents only a very small number of users (the majority being physical persons).

**Table 4- Percentage of subscribers of pre-paid services and contract services, (based on the average number of relevant subscribers)**

Number of subscribers per type of service	2004		2005	
	Number	%	Number	%
Average number of subscribers - <b>pre-paid service</b> (AMC Vod)	1147239	97	1353428	97
Average number of subscribers - <b>contracted service</b> (AMC Vod)	32164	3	41292	3
<b>Total</b>	<b>1179403</b>	<b>100</b>	<b>1394719.5</b>	<b>100</b>

45. During the period 2004 and 2005, the undertakings AMC and Vodafone<sup>14</sup> have offered a number of new service programs, however, without applying any significant change in the respective usage prices (with the exception of business contracted service, for which the options offered are limited). Under these conditions, the options among which the consumers can choose are small and ineffective.
46. The change of the type of services (from contracted service to pre-paid service, or vice versa), as well as the change of the operator incurs a cost <sup>15</sup> to the consumer, which implies that the customer must have an economic interest to operate any of these changes.
47. The lack of portability of the numbers and limited information decrease the propensity of the consumer switch to another the operator.

<sup>14</sup> Consolidated financial reports for year 2005 ... (source to be confirmed further.)

<sup>15</sup> In the case of changing the type of service, the client is obligated to pay: if a subscriber wishes to changes the access to service (SIM card) needs to buy a new SIM card; the same applies if the subscriber wishes to notify other people on the change of his/her mobile phone number.

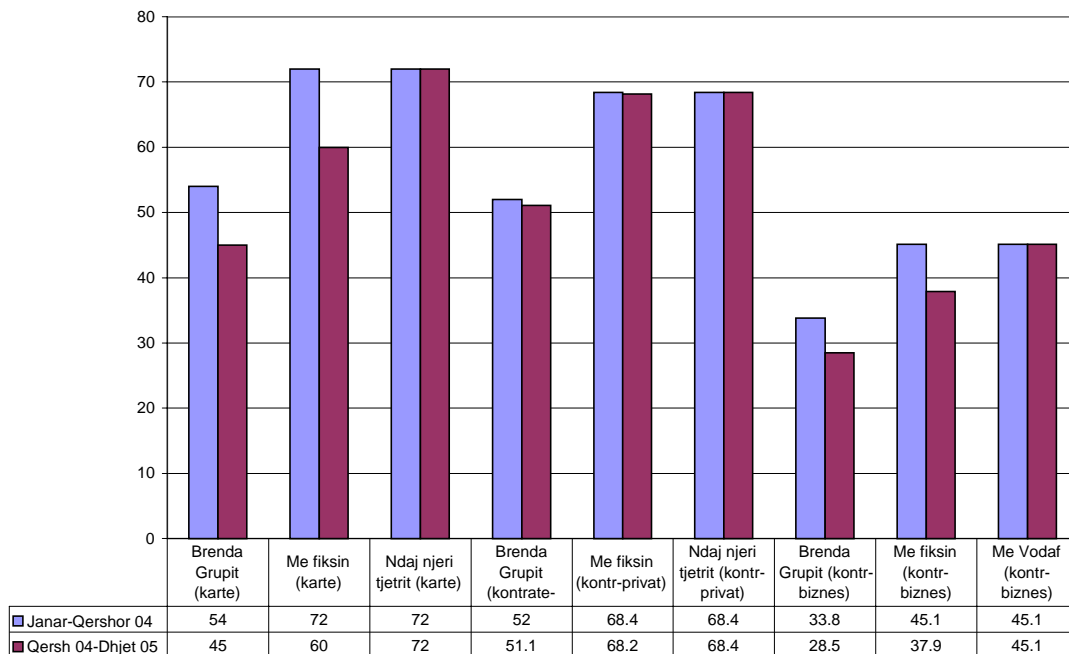
## VI. F Other characteristics of the market

48. The relevant product in the mobile telephony market is homogenous.
49. Demand in the mobile telephony market in Albania has been sustainable<sup>16</sup>.
50. Cost in the mobile telephony market in Albania, is uniform, both because of the almost equal production technology, as well as similar conditions of the undertakings operating in the market, i.e. AMC and Vodafone.
51. Pursuant to Article 8 Law No. 9121, dated 28.07.2003, titled “On Protection of Competition”, and by reason of [estimated] market share, market entry barriers, potential competition, the economic power of the incumbent undertakings, the negotiating power of the consumers, as well as other market characteristics, results that the companies **AMC and Vodafone have dominant position in the mobile telephony market [in Albania]**.

## VII. Behaviour of undertakings in the market

52. During all the investigation period, the undertakings have applied similar tariffs that have remained quite unchanged, so that there was not any indication of competitiveness (see figures below<sup>17</sup>).

**Figure 1-Tariffs applied by AMC during the period 2004 -2005**

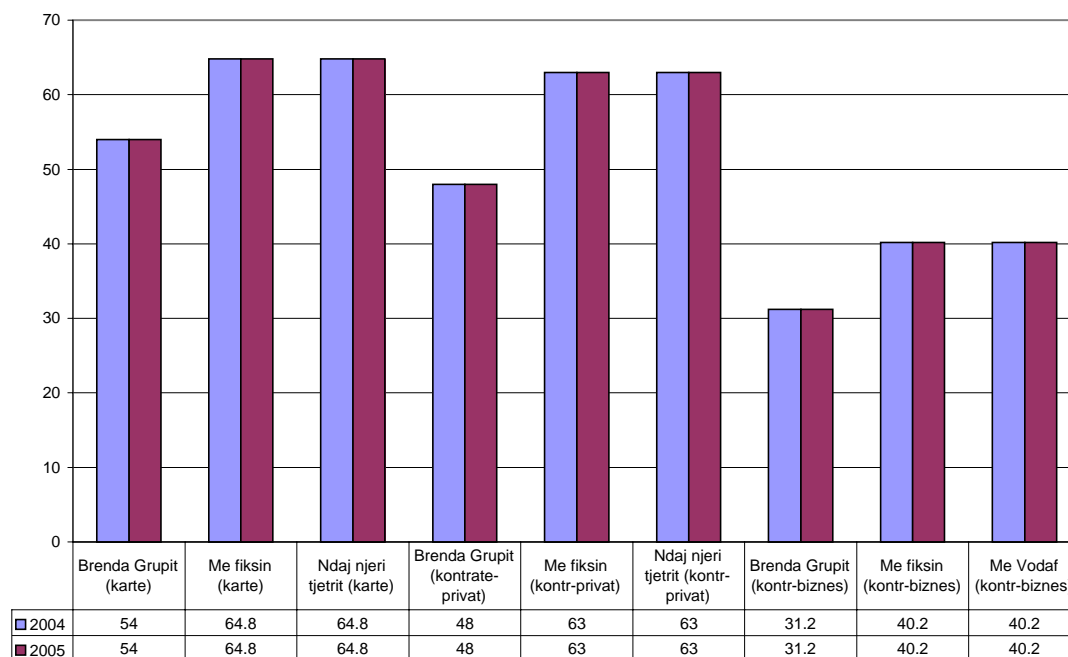


<sup>16</sup> The rate of demand increase in the mobile telephony has been very high. For example, in the years 2003, 2004 and 2005, the rate of demand increase was, respectively, 29%, 15% and 21%, (calculated on the number of subscribers in a given year).

<sup>17</sup> Source: AMC File No. 1 of the Survey; Tables: “Tariffs applied by AMC”; “Tariffs applied by Vodafone”, and “Tariffs File”.

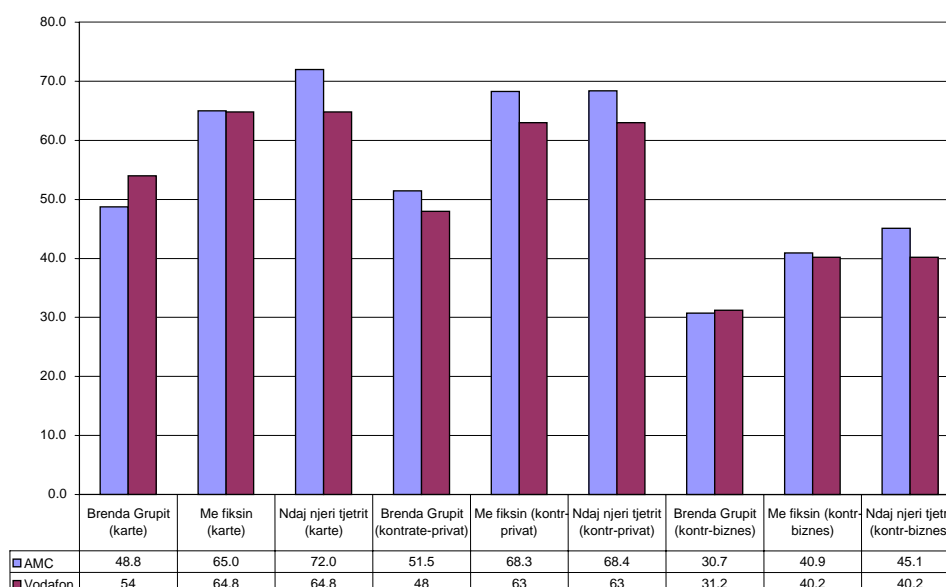
53. The tariffs applied by AMC sh.a. during the investigation period, have been changed only in June 2004. The change consisted in the reduction of the tariff for calls within the network, for all three types of service, as well as for calls to the fixed-line, but only regarding the pre-paid service and contract service for businesses. On June 2004, AMC sh.a. has applied an increased tariff for all international outgoing calls.

**Figure 2- Tariffs applied by Vodafone during the period 2004 -2005**

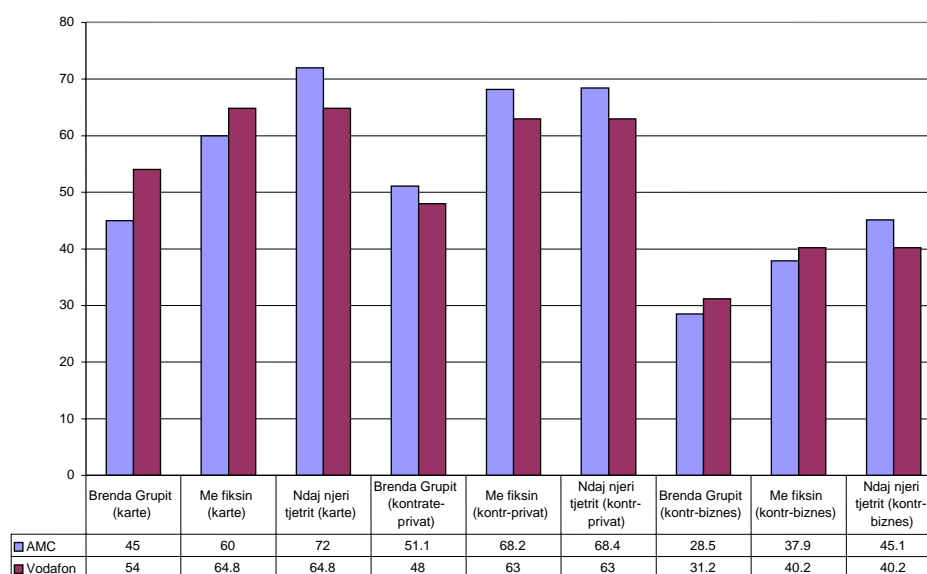


54. According to the information provided by the undertakings (See Figure 2 above), the tariffs applied by Vodafone sh.a. during the investigation period have remained unchanged.
55. The tariffs applied by both undertakings are similar, and, in general, complementary. The tariff changes applied by the operators are symmetrical, if viewed from the standpoint of the totality of the services they provide. Figures 3 and 4 below illustrate a comparison between tariffs applied by the two operators, respectively for years 2004 and 2005.

**Figure 3 – Comparison between tariffs applied by AMC and Vodafone during 2004**



**Figure 4 – Comparison between tariffs applied by AMC and Vodafone during 2005**



56. Both AMC sh.a. and Vodafone sh.a. have declined to implement Decision No. 179, dated 07.05.2004 of the Telecommunications Regulatory Entity. This decision recommended to setting the national termination fee for mobile telephony at no higher than the threshold of 22 Lek/minute. The implementation of this recommendation would lead to having a national termination fee for mobile telephony services no higher than 22 Lek/minute for year 2004, and no higher than 28 Lek/minute for year 2005. The Competition Commission is of the opinion that, at that time, such price would reflect the price applied in an effectively competitive market.
57. The agreed decrease of termination tariffs at the level of 28 Lek/minute at the end of year 2004, has not created, during the investigation period, any

decreasing effect on the tariffs of the relevant product for none of the undertakings AMC and Vodafone.

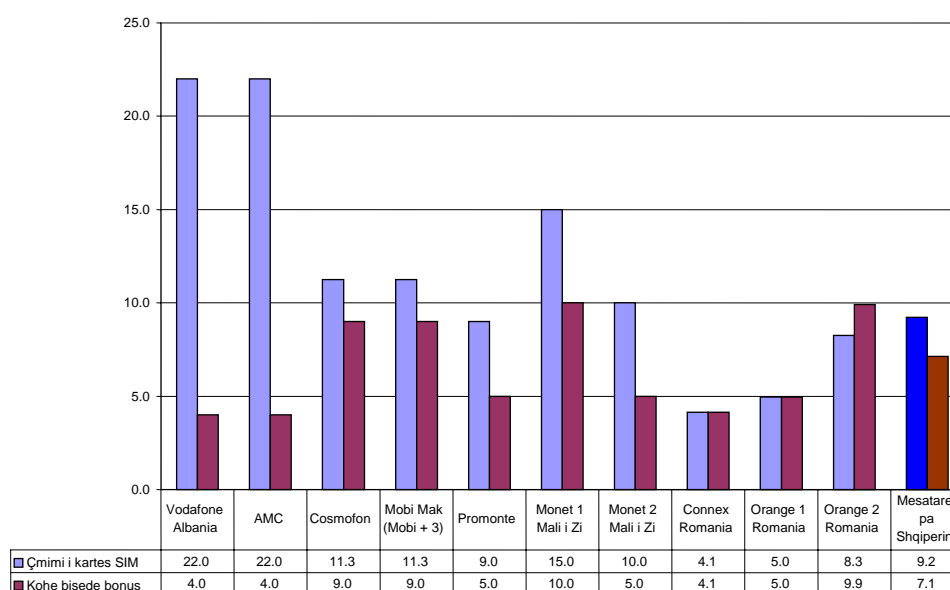
58. Both undertakings, AMC and Vodafone, have applied national termination tariffs that are more than twice higher than the average termination tariffs applied by the countries in the region.

**Table 5- Termination tariffs applied by the operators in Albania and Termination tariffs applied in countries in the region as of 31 December 2004<sup>18</sup>, (expressed in Eurocent/minute)**

Termination tariff	Albania	Bulgaria	Croatia	Rumania	Montenegro	Serbia	FYROM	Turkey	Average (without Albania)
	23	19.1	8.8	7.3	16.5	2.5	11.8	8.4	10.6

59. Both undertakings, AMC and Vodafone, have applied pre-paid service tariffs that are more than twice higher than the respective average applied by the countries in the region. This fact is illustrated in Figure 5 below.

**Figure 5 – Pre-paid SIM card tariffs applied in countries in the region as of 2005 (expressed in Euro)**



18 Excerpt from the Document on Analysis of Mobile Telephony, prepared by the Telecommunications Regulatory Entity. Page 16, Source: Cullen International Country Comparative Report, August 29, 2005.

60. The figure above shows that tariffs applied by the undertakings AMC and Vodafone, are approximately 2.4 times higher than the respective region's average, and the bonus call time is approximately 2.5 times lower than the respective region's average,
61. Both undertakings, AMC and Vodafone, have applied phone card service for short and long distance calls tariffs that are higher than the respective region's average. This fact is illustrated in Table No. 6 and Figure 6 below.

**Table 6-Comparison of phone card service tariffs, both for short and long distance calls, with tariffs applied by companies operating in the region as of November 2005 (expressed in Euro)<sup>19</sup>**

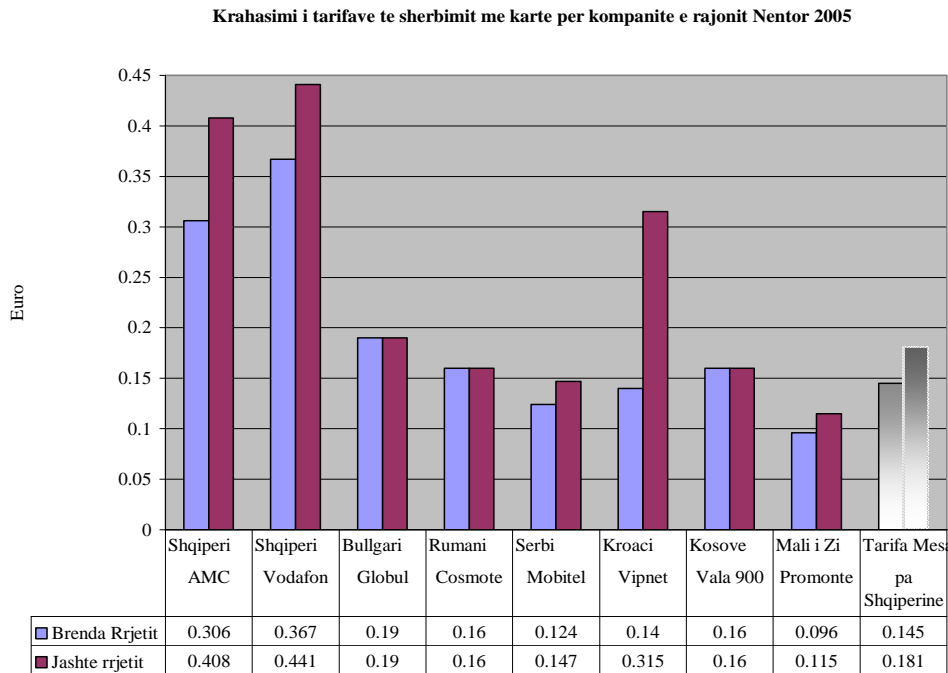
Type of Service	COMPANIES								Without Albania
	AMC	Vodafone	Globul	Cosmote	Mobitel	Vipnet	Vala 900	Promonte	Average Tariff
	Albania	Albania	Bulgaria	Romania	Serbia	Croatia	Kosovo	Montenegro	
<b>Within the network</b>	0.306	0.367	0.19	0.16	0.124	0.14	0.16	0.096	0.145
<b>Outside the network</b>	0.408	0.441	0.19	0.16	0.147	0.315	0.16	0.115	0.181

<sup>19</sup> Source: Call tariffs applied by the operators in the region are taken from the File No. 1 of the Survey for AMC – Table of Tariffs Applied in Neighbouring Countries.

The exchange rate applied in the table below is that of November 2005.

Albania	Lek / EURO	1 Euro = 122.46 Lek
Bulgaria	BGN / EURO	1 Euro = 1.948 Lev
Serbia	Dinar / EURO	1 Euro = 84.96 Dinar
FYROM	MKD / EURO	1 Euro = 60.23 Denar
CROATIA	HRK / EURO	1 Euro = 7.4 Hrk

**Figure 6- Comparison of phone card service tariffs with companies operating in the region as of November 2005**



### VIII. Abuse of dominant power<sup>20</sup> by AMC sh.a. and Vodafone Albania sh.a.

62. According to Law No. 9121, dated 28.07.2003, titled “On Protection of Competition”, **Article 9, paragraph 1** “... is prohibited any abuse of dominant market power, by one or more undertakings”, and **paragraph 2, letter “a”**, “Abuse [of dominant power] may constitute the application, done either directly or indirectly, of unfair purchase or sale pricing, or imposition of any other unfair trading conditions”.
63. Pursuant to Article 9, paragraph 2, letter “a”, “... one of the main forms of abuse of dominant power is the application of unfair prices (*Unfair Pricing* or *Excessive Prices*)<sup>21</sup>. The price applied is unfair when it is much higher than

<sup>20</sup> The Competition Commission observes that the undertakings holding a dominant position should not be allowed to perform certain operations (even if such operations aim at protecting their interests), when they lead to the strengthening of dominant position and abuse of it. In order to further clarify the above statement, below is given an excerpt from a citation of the court decision made in relation to the Case Deutsche Gramophone GmbH vs. Metrosb-Grossmarkte: “Consistent with the court decision, the price change may be a determinant indicator of abuse of dominant position, if the price difference is large and is not supported by objective motivation”. The same affirmation is made in connection with Sirena vs. Eda Case: “Evidence of abuse of dominant position does not necessarily consist on setting high prices, but nevertheless, it can be a determinant indicator, if unmotivated and too high, or neutral [if the last two conditions do not hold simultaneously true].”

<sup>21</sup> In relation to the Case General Motors, 1975, under Paragraph 12, the European Court of Justice expressed the following consideration: “Abuse [of dominant position] may consist, in particular, in the application of a price that compared to the economic value of the service provided, seems excessive”; The European Court of Justice, in dealing with the case United



would be in any competitive market. The characterization of the price as being unfair is done, first of all, upon comparing the level of the price with the economic value of the product, or, stated otherwise, with the product's cost<sup>22</sup>. If the estimation of the cost of the product is not possible to make, then, the price level and the level of profit should be compared against the price level and the level of profit of similar products, or, alternatively, with the price level and the level of profit of the same products on other geographical markets<sup>23</sup>. As the case may be, and upon the available information, other methods can be applied, as well<sup>24</sup>.

64. The verification of abuse involves three tests. Sufficient proof for abuse with dominant position is to have at least one test passed<sup>25</sup>.

#### **VIII.A Application of high prices, without reasonable relation with the economic value of the product**

65. The service prices applied by these undertakings do not have any reasonable relation with their cost. "The economic value may be compared to the product cost, price of other similar products, or the cost of a similar product in a different geographical market"<sup>26</sup>.

66. If the undertakings would implement a national termination fee for mobile telephony at no higher than the threshold of 22 Lek/minute, recommended by Decision No. 179, dated 07.05.2004 of the Telecommunications Regulatory Entity, and considered as a benchmark for 2004, and a national termination fee of no higher than 28 Lek/minute, which was the benchmark for 2005, then the tariffs of termination would reflect a minimal change, at least, but no such event was observed during the period of investigation.

67. If we take into consideration the fact that the international termination tariff applied during the period of investigation was lower than the cost of the respective service, then the annual loss incurred for this difference results

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Brands, 1978, has considered as abuse: ("Paragraph 250:...application of an exaggerated price, with no reasonable connection to the economic value of the service provided").

<sup>22</sup> "...In this case it must be verified if an excessive difference between cost and price exists, and if so, must be examined if price setting is unfair, both at the absolute level and relative to the pricing of competitive products". (*United Brands*, ECJ 1978, paragraph 252).

<sup>23</sup> In relation to Case SACEM, joint cases 110/88, 241/88 and 242/88, 1989, in particular under paragraph 25, the European Court of Justice has made the following consideration: "... where an undertaking holding a dominant position applies tariffs that are much higher than those applied in other member countries, and this comparison is made upon a homogenous base, then such difference should be interpreted as an indicator of abuse of dominant position".

<sup>24</sup> The European Court of Justice has always been transparent on the method it employs to determine unfair pricing. In relation to Case *United Brands*, 1978, paragraph 253, it made the following consideration: "...there can be conceived other methods – and economic doctrines have conceived several – to define the criteria of determining unfair pricing of a product".

<sup>25</sup> *The Case British Leyland vs. Commission* ECR no. 311/84, 3283 (1986)

<sup>26</sup> Bellamy&Child (2001) "European Community Law of Competition".

equal to the annual international incoming traffic multiplied by loss per minute (the difference between cost and price of international termination service). If such service would not run at a loss, then the profit of both mobile operators would be even higher.

### **VIII.B Trading gains that otherwise would not apply in a presumably competitive market**

68. In relation to this test can be estimated the already high and increasing EBITDA and profit rates for both undertakings. Generally, in markets with a normal level of competition, profit rates follow a decreasing trend. This fact is shown under Table 1 “Profit indicators for AMC company during the period 2003-2005” and Table 2 “Profit indicators for Vodafone company during the period 2003-2005”.
69. The indicator Average Revenue per User per Minute of Usage (ARPU/MOU) for both undertakings has the highest values if compared to Western European countries. This fact indicates that the tariffs applied for Albanian subscribers are high (See Table 7 below).

**Table 7- ARPU value (Euro per year) and MOU value for Vodafone Group- 2004<sup>27</sup>**

<b>Type of service</b>	<b>Albania</b>	<b>Germany</b>	<b>Italy</b>	<b>Greece</b>	<b>Spain</b>	<b>Ireland</b>
Pre-paid	171	121	306	211	179	370
Contracted	2458	482	927	781	687	1186
Average	241	303	360	398	408	602
Pre-paid %	97	52	92	66	54	72
Min/users	202	227	401	442	472	635
<b>ARPU/MOU Average</b>	<b>1.19</b>	<b>1.33</b>	<b>0.90</b>	<b>0.90</b>	<b>0.86</b>	<b>0.95</b>

### **VIII. C Comparison of tariffs with [tariffs applied in] other geographical markets<sup>28</sup>**

27 Excerpt from the Document on Analysis of Mobile Telephony, prepared by the Telecommunications Regulatory Entity. Page 38. Data provided by Vodafone Group. The indicator ARPU/MOU (average) is calculated by the Competition Authority.

28 The Federative Competition Commission of Switzerland launched an investigation into the Mobile Telecommunications Market, in relation with the operation of three undertakings: Swisscom, Orange and Sunrise, which held dominant positions. One of the main approaches in conducting the investigation was that of benchmarking analysis, i.e. prices applied in Switzerland were compared against those applied in other EU countries. The Federative Competition Commission of Switzerland was obliged to take this approach, because Swisscom company repeatedly declined to provide the analysis between the cost and price of the services it offers, and therefore it became impossible to make an analysis of the excessive price applied in the market. The benchmarking analysis involved two countries with similar characteristics to Switzerland, in relation with two aspects: GDP, and geographical configuration and network infrastructure. Sweden was compared with in relation with the former characteristic, and Austria with the latter. The investigation revealed that not only all three abovementioned undertakings held dominant positions in

- 70 The Competition Commission notes that in absence of a detailed services cost model, may be used the benchmarking <sup>29</sup> approach i.e. comparison of the tariffs applied for different services in Albania, with those applied for respective or similar services in the region.
71. According to “Cullen Report 2 – Country Comparative Report (2006) *“...Albania represents an exception with regard to pricing; she is placed among EU countries that apply the highest prices.”*<sup>30</sup>.
72. Cullen Report 2 – Country Comparative Report (2006) makes a comparison between average tariff baskets<sup>31</sup> of mobile telephony services applied by countries in the region, and the tariffs<sup>32</sup> applied in EU countries. As the Figure 733 (a), (b), and (c) shows, in all three groupings, the average tariff of mobile telephony services applied in Albania, are the highest in the region, and for the category (b), i.e. medium usage mobile basket, they rank among the highest in Europe (See Figure 7 (b) and (c)). In this report is stressed that: *“..In Albania are applied tariffs that rank among the highest in the EU.”*<sup>34</sup>.

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the market, but they had also abused of such position by trading products with excessive prices. ...For these reasons, was decided to impose financial penalties on these undertakings.”

29 Decision by the European Commission, dated 25 July 2001, in relation to the proceedings based on Article 82 of the EU Treaty (COMP/C-1/36.915-Deuche Post AG-Interception of cross-border mail), paragraph 159. *“In relation to the case brought before the European Court of Justice, a judgment on fairness of a specific price may be made by comparing it to the economic value of the good or service offered. A price, which is set at a level; that does not appear reasonably connected to the economic value of the product offered, should be considered as excessive, by reason of adverse effects to the customers. In a market open to competition, a common verification would be the comparison of the price applied by the dominant undertaking with the price applied by the other competitors. Because of the existence of DPAG’s as monopoly, such comparison is not possible in the actual case. Furthermore, DPAG has lately presented a transparent method for cost calculation applied internationally, and no reliable data exists for the relevant period of time (in relation to this case). As a result, the Commission is in no position to make a detailed cost analysis of the average cost of DPAG for the services under consideration during this period. For these reasons shall be used the benchmarking approach.*

<sup>30</sup> “Albania represents an exception, with prices that would rank among the highest in the EU”. Cullen Report 2 – Country Comparative Report June 26, 2006, page 14.

<sup>31</sup> The tariffs are averaged by grouping the subscribers into three categories: a) low usage mobile basket (i.e. subscribers that use mobile phones less than others); b) medium usage mobile basket; and c) high usage mobile basket.

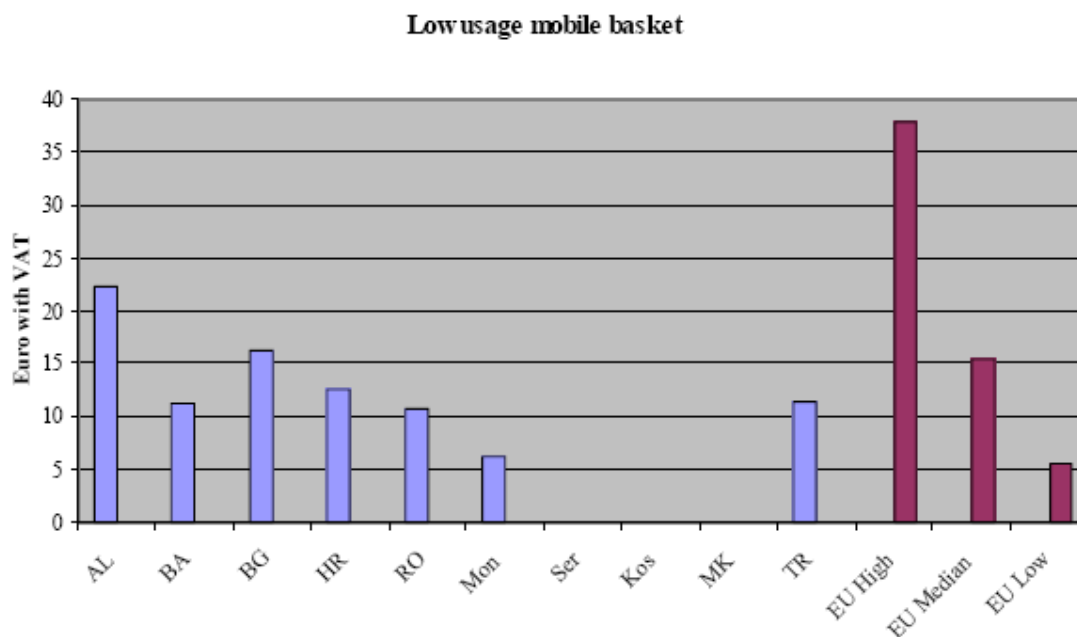
<sup>32</sup> Average tariffs applied in European countries are represented into three groups: minimal, maximal and medium.

<sup>33</sup> Cullen Report 2 – Country Comparative Report June 26, 2006. Pages 162, 163, Figures 40, 41, and 42.

<sup>34</sup> “...The figures suggest that the prices for the low usage basket compare favourably with those of the EU. Tariffs for all countries and geographic units except Albania are below the EU median. For the medium and high usage baskets the tariffs in South Eastern Europe appear to be relatively higher when compared with the EU. Albania has tariffs which are

73. The information conveyed through these graphs confirm that the undertakings under investigation have applied higher tariffs than those applied in other countries in the region, whose figures for Gross Domestic Product (GDP) Gross National Income per capita (GNI/c) are comparable to Albania's (e.g. FYROM).

**Figure 7 (a) Average tariffs for low usage users of mobile telephony services applied in countries in the region and European countries as of 2005**

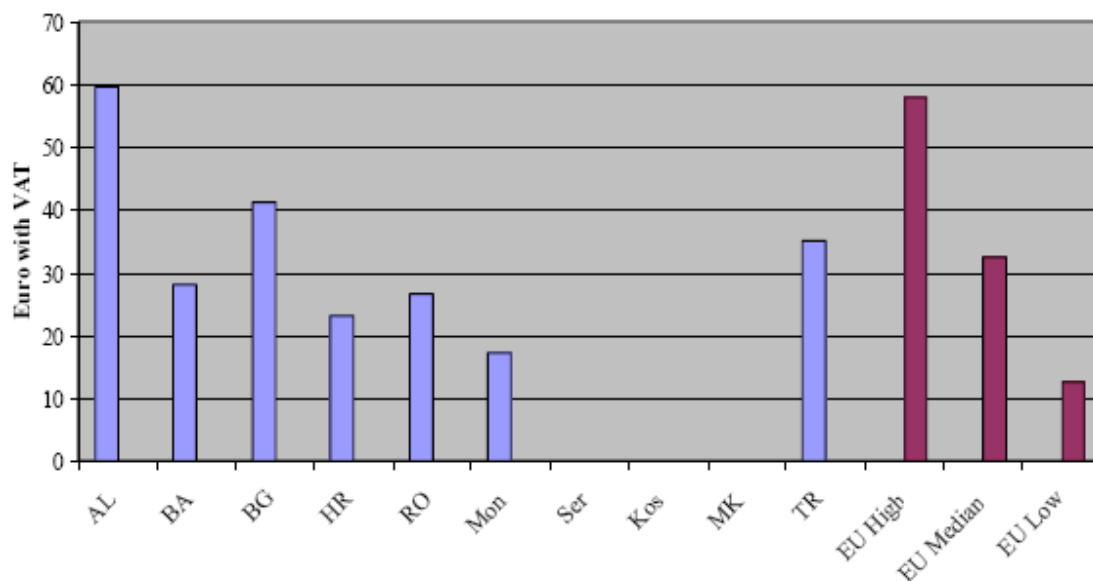


**Figure 7 (b) Figure 7 (c) – Average tariffs for medium usage users of mobile telephony services applied in countries in the region and European countries as of 2005**

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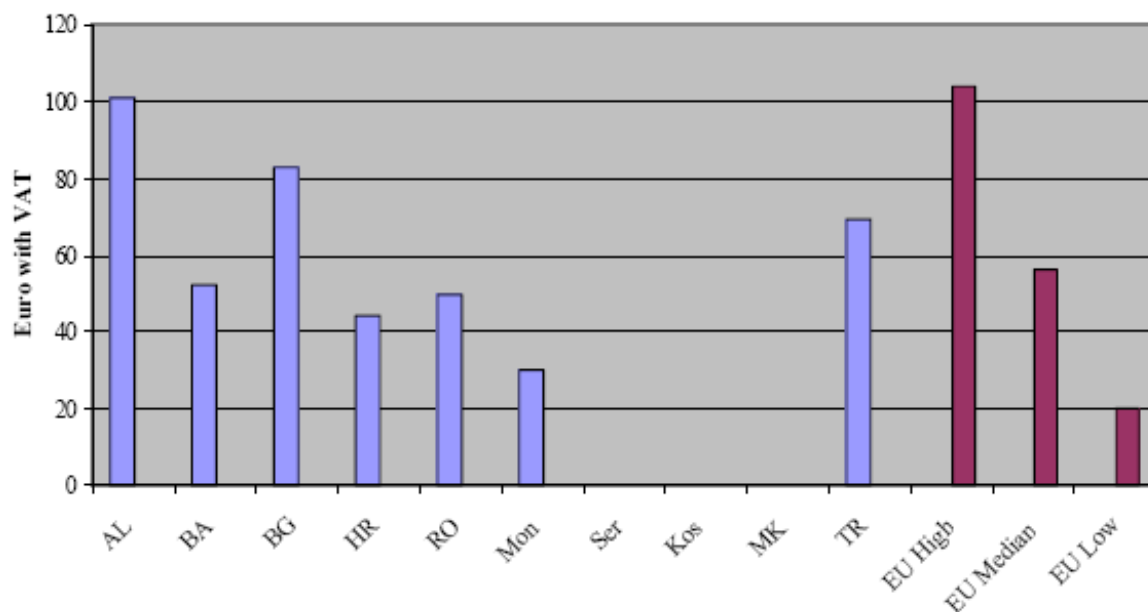
close to the highest found in the EU and also Turkey has tariffs above the EU median”. Page 162 of Cullen Report 2 – Country Comparative Report June 26, 2006.

### Medium usage mobile basket



**Figure 7 (c) – Average tariffs for high usage users mobile telephony services applied in countries in the region and European countries as of 2005**

### High usage mobile basket



**FOR THE ABOVE REASONS:**

Pursuant to Article 24, letter “d”, Articles 8 and 9, Article 74, letter “a”, and Articles 75 and 80 of Law No. 9121, dated 28.07.2003, titled “On the Protection of Competition”, the Competition Commission,

**DECIDED:**

1. The undertakings AMC sh.a. and Vodafone sh.a. have abused of dominant position in the mobile telecommunications market, by applying unfair pricing during the investigation period (2004, 2005).
2. In relation to violations of the Law as stated under paragraph 1, the undertaking Albania Mobile Communication sh.a. (AMC) is imposed a financial penalty equal to 2 % of the annual turnover of the relevant product in the year 2005. The amount of the financial penalty, expressed in value, is equal to 211 552 000 Lek.
3. In relation to violations of the Law as stated under paragraph 1, the undertaking Vodafone Albania sh.a. (Vodafone) is imposed a financial penalty equal to 2 % of the annual turnover of the relevant product in the year 2005. The amount of the financial penalty, expressed in value, is equal to 242 633 000 Lek.
4. The Tax and Duties Police is in charge to implement this decision.
5. This decision enters into effect immediately.

This Decision was proclaimed today, on 09.11.2007, in Tirana.

## **COMPETITION AUTHORITY**

**Lush Përpali**

(\_\_\_\_\_)

**Deputy Chairman**

**Servete Gruda**

(\_\_\_\_\_)

**Member**

**Koço Broka**

(\_\_\_\_\_)

**Member**

**Lindita Milo (Lati)**

**CHAIRWOMAN**