



REPUBLIC OF ALBANIA
-THE COMPETITION AUTHORITY-
-THE COMPETITION COMMISSION-

Nr.____ Prot.

Dated 10.12.2008

D E C I S I O N

No. 94, Dated 10. 12. 2008

On

“The undertaking os some measures to protect competition on the market of transition and interconnection in electronic communications, as well as the conclusion of the investigations regarding the operators Albanian Mobile Communication sh.a, Vodafone Albania sh.a. and Albtelecom”

The Competition Commission, on its meeting held on 10.12.2008, 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: The assesment of the behaviour of the Operators with Significant Market Power in the Electronic Communications Market, with regard to the transition and interconnection operations.

Legal basis: Law No. 9121, dated 28.07.2003 “On Protection of Competition”, as amended, Article 24.

Upon the reviewing of the following documents:

- The Report on the Preliminary Investigation “On assesment of the existence of abuse with dominant position by Albtelecom sh.a, Vodafone sh.a and Albanian Mobile Communication sh.a”,
- The Report prepared by the Working Group; and

- The Report prepared by the Secretary General;

The Competition Commission,

NOTED THAT:

1. The Association of Alternative Operators, as well as some of the alternative operators, have filed with the Competition Authority several complains that regard the behaviour of the operators with significant market power. They complain that these operators have abused with the dominant market position and have therefore caused the limitation of free and effective competition in the electronic communications market.
2. Upon receiving these complains, the Competition Authority has immediately started the monitoring of this market and has undertaken consultative sessions with the interested parties. The Decision No. 7, dated 07/05/2008 adopted by the Secretary General enabled the opening of the proceedings for the launching of the preliminary investigation on the existence of abuse with dominant position in the market by Altelecom sh.a. Vodafone sh.a. and Albanian Mobile Communications sh.a.
3. During this period of time, the Competition Authority has cooperated with the AKEP (ERT) by coordinating and negotiating the various measures for the improvement of the situation in the market.
4. Through the adoption of Decision No. 77 dated 11.04.2008, the Competition Authority has recommended the AKEP (at that time, the ERT) to complete the legal framework with bylaws in relation with the transitioning of international calls and the provision of alternative services, such as VOIP.

5. The relevant market

The Product market is composed of two sub-markets:

The transitioning of international calls is defined as the transitioning of phone calls by one operator, between the point of interconnection of this operator and other operators that are not directly connected between them. The international transitioning serves to complete the incoming and outgoing international telephone calls. The operators that require the international transition services are the service providers of international calls to end users in Albania.

The interconnection is necessary to the operators to enable them to originate, terminate and transitate the calls, and this service is impossible to be replaced with any other service.

The geographical market is all the territory of the Republic of Albania.

6. Undertakings under investigation

- **Albtelecom sh.a.** was founded in February 1992 and until 1 October 2007 has been in under the ownership of the Albanian state. The privatization procedure of 76% of the shares of Albtelecom by the Turkish company Calik Energjie was completed on 1 October 2007 and the remaining 24% of the shares remained under the ownership of the Albanian state. Albtelecom sh.a. is the only national operator of the fixed line public network with a First Class Licence.
 - **Albanian Mobile Communications** was licenced on May of the year 1996. The capital of this company was 100% state-owned. In the year 200, AMC was privatized. 85% of the shares of this company are owned by consortium Telenor-Cosmote, 12.6% of the shares are owned by the Ministry of Economy, Trade and Energy, and the remaining 2.4% of the shares are owned by small shareholders, who are AMC employees at the time of privatization. AMC offers its services in the mobile telephony market.
 - **Vodafone Albania** was licensed on 9 June 2001. Vodafone Albania is the second operator licensed in the mobile telephony market and is part of the biggest telephony group in the world. Vodafone provides services in the mobile telephony market.
7. Albtelecom and the alternative operator Hermes Communications have signed Amendment No.1. Annex 8, paragraph I, letter “c” TRAFFICKING SERVICES, transition of calls, letter “c”, of the Interconnection Agreement, through which, Hermes Communications has been granted the right to offer the transitioning of international calls to Albtelecom network. This is different from the other Interconnection Agreements that Albtelecom has entered into with other alternative operators. Based on the preliminary investigation, this agreement, “de jure” is in effect, but in fact has never been implemented, because it was declared by Albtelecom as a “lapsus”. This fact is further confirmed by Hermes Communications ¹ and the AKEP².
8. Albtelecom has billed several alternative operators the service of E1 port connection (at a capacity of 2 Mbps) with the amount of 30 thousand Lek +2 thousand Lek per each additional kilometer from the point of interconnection. These charges are not based in the Interconnection Agreements entered between Albtelecom and the alternative operators. Through note verbale No. 2763/2 dated 22.04.2008, addressed to AKEP,³ Albtelecom informs that has already withdrawn the billing of this service towards the rural operators since January 2008. Furthermore, this company has declared that it will return the amounts paid by those alternative operators that have accepted the bills.⁴.

¹ Note No. Prot. 108. Dated 11.06.2008 issued by Hermes Communications, pg. 3

² Note No.1485/3 Dated 19.6.2008 issued by ERT,pg.2-4

³ Ib. id. pg. 2.

⁴ See, for example Note Verbale No. 914. dated 12.11.2008 by Albtelekom addressed to Nisatel, where is stressed that “Albtelekom ... has not continued with the invoicing of circuits 2 Mbps and with any other sort of invoicing not foreseen by the

9. A part of the alternative operators claim that they have been obliged to sign a declaration conditioned with the rennovation of the interconnection agreement with Albtelecom. One of the conditions of the declaration is to deposit bank guarantees (that vary from 300 to 1000 EUR) to the account of Albtelecom. The guarantee shall be retained Albtelecom in the case that the operator does not fulfill the conditions mentioned above. From the investigations made it results impossible to determine whether the signing of this declaration was obligated by Albtelecom, or were the alternative operators who proposed it.
10. From the preliminary investigation resulted that the Alternative Operators do not transit calls in the AMC and Vodafone networks, therefore does not exist in practice a termination market in the networks of the mobile telephony operators.
11. With regard to the termination tariffs that are applied by Albtelecom, AMC and Vodafone towards the alternative operators, from the investigation results that there is no price fixing or discrimination between the various rural operators. All three operators with significant market power apply different tariffs for the interconnection with alternative operators.

FOR THE ABOVE REASONS

Pursuant to Article 24, letter “d”, of Law No. 9121, dated 28.07.2003 “On Protection of Competition”, as amended, the Competition Commission,

DECIDED:

I. To undertake several measures for the protection of competition in the electronic communications transition and interconnection market, as follows:

I.1 To disallow the undertaking of any unilateral or not notified action, that is not in compliance with the conditions of the interconnection agreements and in breach of Law No. 9121, dated 28.07.2003 “On Protection of Competition”, as amended, by any of the operators that operate in the electronic communications market.

I.2 To require by Albtelecom sh.a, and Hermes Communications the official invalidation of the subtitle “THE TRANSITION OF CALLS”, letter “c” of Amendment No. 1, Annex 8, Paragraph 1, letter “c” “Trafficking Services”, of the Interconnection Agreement H-Communications within a one-month period.

Interconnection Agreement...it is in the process of invalidating the invoices issued for the aforementioned circuits and is proceeding with the reimbursement of the payments made”.

I.3 The Alternative Operators, which have credited various amounts to Albtelecom account in the form of unconditioned bank guarantees, or other payments unforeseen by the bilateral agreements, must be returned any payment made outside such obligations, within a 3-month period.

I.4. Albtelecom sh.a. is obligated to inform the Competition Authority on the undertaking of the abovementioned measures within 15 days of the deadline determined under paragraphs 1.2 and 1.3.

II. To conclude the investigations regarding the behaviour of the Operators with Significant Market Power in the market of transition and interconnection of international calls.

III. The Secretary General is in charge with the implementation of this decision, the notification of the interested parties and the continuous monitoring of these markets concerning any type of behaviour that may impede the free and effective competition in the market.

This decision enters into effect immediately.

THE COMPETITION COMMISSION

Lush Përpali
(_____)
Deputy Chairman

Servete Gruda
(_____)
Member

Koço Broka
(_____)
Member

Lindita Milo (Lati)
CHAIRWOMAN