



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

Nr.____ Prot.

Dated 11.04.2008

D E C I S I O N

No. 77, Dated 11. 04. 2008

On

Some recommendations on the telecommunication market

The Competition Commission, on its meeting held on //. //.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: Recommendations to public institutions concerning the issues of the interruption of the interconnection agreement and the liberalization of the international traffic of telephony.

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

Upon reviewing the Monitoring Report on “Issues concerning the interruption of the interconnection agreement and the liberalization of the international traffic of telephony”, drafted by the Market Monitoring Department, the Competition Commission,

NOTED THAT:

I. Field of application of Law No. 9121, dated 28.07.2003 “On Protection of Competition

1. Law No. 9121, dated 28.07.2003 “On Protection of Competition” (hereinafter called the “Law”) is applied in cases when undertakings or groups of undertakings, either directly or indirectly, affect, or can affect the

market and that exercise their activity in the territory of the Republic of Albania (Article 2 of the Law). Albtelekom sh.a., Albanian Mobile Communication (AMC) sh.a., Vodafone sh.a. and another 55 Alternative Operators (Rural) offer telecommunication services within the territory of the Republic of Albania and are considered as “undertakings”, pursuant to Article 3, paragraph 1 of the Law “On Protection of Competition”.

II. The issue under consideration

2. The monitoring of the potential abusive behaviour of AMC sh.a, Vodafone, sh.a and Albtelekom sh.a with dominant position in the market.

III. The definition of relevant market

The relevant market includes:

- The wholesale product market, which includes “transition services for public networks of fixed-line telephony” and the interconnection services market, in accordance with the recommendations of the European Commission.

- and the geographical market is the whole territory of the Republic of Albania.

IV. Main findings

The year 2007 was the year of important transformations in the telecommunication market in Albania. On 1 October 2007 was completed the privatization procedure for 76% of the shares of Albtelekom sha, the only national operator in the fixed-line telephony market, and the management of the company passed on the hands of Çalik Energjie a.s. Likewise, part of the sale agreement of Albtelekom was the 76% of the shares of the third operator of mobile telephony, “Eagle Mobile” sh.a.

The review by the Telecommunications Regulatory Entity of the licenses of the so-called “rural operators” and the offering of the opportunity to offer services in urban areas under the new labelling as “alternative operators” constitutes another important development in the Telecommunications Sector.

These radical changes in the telecommunications sector have brought about substantial re-dimensioning of contractual and practical relations between the service providers operating in the sector, which has also resulted in problems and mutual complaints.

The Competition Authority has reviewed the claims submitted by the Alternative Operators that operate in the telecommunications market. These alternative operators complain to the Telecommunications Regulatory Entity in relation to abusive behaviour by the Operators with Significant Market Power (OSMP). In a similar way, the OSMPs claim that the alternative operators are performing illegal market activity that is in breach of the existing interconnection agreements.

The alternative operators pretend that the OSMPs are abusing with their dominant position and aim at the elimination of competition by means of

unilateral termination of Interconnection Contracts, or refusal to enter such contracts, thus infringing letter “dh”, paragraph 2 of Article 9 of the Law.

For all these reasons, the Competition Authority deemed reasonable and indispensable the reviewing of such complaints, in order to be able to assess whether these OSMP are really abusing with their dominant position, and whether are engaged in distorting or restricting the competition in the market, in breach of the dispositions of Article 9 of Law No. 9121, dated 28.07.2003 “On Protection of Competition”.

V. The monitoring period

The monitoring of the Operators with Significant Market Power towards the Alternative Operators was performed during the period October 2007-31 March 2008.

VI. The monitoring procedures followed

The Competition Authority has closely monitored the developments in the telecommunications market, because of the new developments occurred lately, the changes in the market structure, the technology evolution and the insufficient competition existing in this market.

Many of the documents submitted to the Competition Authority contained very specific elements of the regulation in the Telecommunications Sector. Mostly they had to do with obligations for intervention by the Regulator, in compliance with the existing law “On Telecommunications in the Republic of Albania” and for this reason, the Competition Authority has required to closely cooperate with the Telecommunications Regulatory Entity (TRE). The TRE has issued so far three decisions to deal with this issue, which have been taken into consideration during the monitoring process.

Meanwhile, the Competition Authority has followed the monitoring and clarification procedures with all the parties, in relation to the issues closely and exclusively linked to Law No. 9121, dated 28.07.2003 “On Protection of Competition”.

For these reasons, during the monitoring period correspondence was running between the Competition Authority and the undertakings and also the Secretariat organized several hearing sessions with the Operators with Significant Market Power, i.e. Albtelecom sh.a, AMC sh.a and Vodafone sh.a, as well as with some of the alternative operators.

VII. Problems with competition restriction observed in the market

1) The transition of international calls, modified as national calls, towards Albtelekom users, by alternative operators

The problem with the transition of international calls is created mainly as a consequence of a lack of legal basis. The Telecommunications Regulatory Entity, should provide to complete the necessary legal framework, which would determine the rules for the licensing, the conditions, means and

procedures for the offering of this service and the opening of this market (the market of the transition of international calls).

Pursuant to Decision of Council of Ministers No. 464, dated 03.07.2003, the international telephony services became open to competition on the year 2005. This Decision was adopted in the context of the efforts of the Albanian Government to fulfill its obligations in the framework of the integration of Albania into the World Trade Organization (WTO).

In the context of these international obligations, Albania was to open this market to competition until the end of the year 2003, but after the negotiations held with the WTO, was agreed to postpone the deadline by one year. DCM No. 464, dated 03.07.2003, provides for sanctioning this postponement of the deadline and there is stated that “exclusivity ceases to exist at the end of 2004”, but fails to explain what services shall really be open to competition. In other words, even though it has been agreed that the market shall open to competition, in reality, this is not fully defined by the legislation.

It seems clear that the claims of the Operators with Significant Market Power are based on the shortcomings of the legal framework that fails to regulate the relations between the market players. In fact, the licenses held by the alternative operators do not specify the offering of such a service and this fact is used by the OSMPs to argue that these operators have no right to perform such service. On the other hand, the alternative operators point out that the same holds true for the OSMPs, since their licenses as well do not specify their right to offer this type of service.

Some of the operators have asked the Telecommunications Regulatory Entity to make an interpretation and determine which operators have the right to perform such service. The Telecommunications Regulatory Entity answered through Decision Nr. 431, dated 30.01.2008 by stating that “the right to provide the service of the transition of telephony traffic is enjoyed by Albtelekom sha only, and all the other operators enjoy this right solely in relation to their own clients.”

However, the Decision by the Telecommunications Regulatory Entity No. 444, dated 26.03.2008 has made null and void the previous Decision No. 431, dated 30.01.2008 and has reassumed the review of all the complaints filed with the TRE regarding the transition of international calls.

Besides the completion of the legal framework, the transition of international calls needs a further clarification, because at the essence of the issue lies the competition between two technologies, the traditional phone communication technology and the new VOIP technology. VOIP technology cost is very low compared to the traditional one, and advances in VOIP seem to make it a substitute to traditional technology, and this seems to be particularly the case in relation to international calls. Nevertheless, the assessment whether VOIP is a substitute to traditional telephony requires a detailed analysis by the Telecommunications Regulatory Entity, which possesses all the necessary technical capacities to make such assessment.

FOR THE ABOVE REASONS:

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

DECIDED:

1. To recommend the Telecommunications Regulatory Entity to complete the legal framework with regard to the transition of international phone calls and the approval of standard licenses for all the service providers operating in the electronic communication market and that provide the service of transition of international phone calls. All these must be performed by taking into consideration:
 - i. The commitments of the Republic of Albania in the context of international agreements signed as member of the WTO.
 - ii. The commitments made in the context of the Stabilisation and Association Agreement.
 - iii. DCM No. 288, dated 18.6.1999 (as amended) "on the approval of the policy document on the development of telecommunications in the Republic of Albania".
2. To recommend the Telecommunications Regulatory Entity the regulation and licensing of alternative services as VOIP.
3. This decision enters into effect immediately.

THE COMPETITION COMMISSION

Lush Përpali
(_____) **Deputy Chairman**

Servete Gruda
(_____) **Member**

Koço Broka
(_____) **Member**

Lindita Milo (Lati)
CHAIRWOMAN