

Council for Trade in Services

Original: English

**IMPLEMENTATION OF SPECIFIC COMMITMENTS IN
TELECOMMUNICATIONS SERVICES
REQUEST FOR A WAIVER**

Communication from Albania

Revision

The following communication, dated 24 February 2004, from the delegation of Albania is being circulated to the Members of the Council for Trade in Services.

1. The Government of Albania hereby submits to the Council for Trade in Services a request for a waiver to allow Albania to postpone until 1 January 2005 the application of commitments undertaken in its GATS Schedule with respect to the exclusivity granted to Albtelecom SH.A ("Albtelecom") for the transmission through its network of international public voice telephony services. This request is presented in accordance with paragraphs 3 and 4 of Article IX of the Marrakesh Agreement Establishing the World Trade Organization. The exceptional circumstances justifying the grant of the waiver, which are set out more fully in the communication from the Minister of the Economy attached as Annex III, may be summarized as follows.

2. In moving toward the full liberalization of the telecommunications sector, the Government of Albania has decided that, to enable Albtelecom to respond to competition in a fully liberalised market, it should benefit from a two-year period of exclusivity.

3. Although the privatisation of Albtelecom was expected by the end of 2000, it was announced only in January 2002. The causes of the delay included investors' insecurity over the war in Kosovo; the effects on international financial and telecommunications markets of the 11 September 2001 attack in New York; increasing operator costs for third generation cellular technology; declining investor interest in expanding into fixed telephony markets; and a delay in the implementation of a tariff rebalancing program for Albtelecom planned for 1999, but which did not begin until September 2001, and will now only conclude in 2005. So far, there has been no investor interest expressed in the privatisation of Albtelecom.

4. On 3 July 2003, the Council of Ministers decided that, as a compensation for its investment commitments, Albtelecom should enjoy an exclusive right to supply international telephony services based on its own network until 31 December 2004. Only exclusivity for international, not national, telephony services was to be maintained. The Council of Ministers further specified that international telephony services shall be open to competition in 2005.

5. The Government of Albania has already taken measures for further market liberalisation, such as the removal of Albtelecom's exclusivity in fixed telephony services in urban areas, and introducing a third mobile operator in the market. The experience of other countries shows that strategic investors have been granted a minimum period of two years between the privatisation and the liberalisation.

6. Accordingly, the Government of Albania requests the Council to consider favourably its request for a waiver, of which a proposed draft is attached as Annex I. An excerpt from Albania's Schedule of Specific Commitments is reproduced in Annex II.

ANNEX I

DRAFT DECISION

ALBANIA
IMPLEMENTATION OF SPECIFIC COMMITMENTS IN
TELECOMMUNICATIONS SERVICES

Request for a Waiver

Decision of [] 2004¹

The General Council,

Conducting the function of the Ministerial Conference in the interval between meetings pursuant to paragraph 2 of Article IV of the WTO Agreement;

Having regard to paragraphs 1, 3 and 4 of Article IX of the Marrakesh Agreement Establishing the World Trade Organization (the "WTO Agreement"), [the Guiding Principles to be followed in considering applications for waivers adopted on 1 November 1996 (BISD 5S/25),] and the Decision-Making Procedures under Articles IX and XII of the WTO Agreement agreed by the General Council (WT/L/93);

Taking note of the request of Albania for a waiver from its commitments under Article XVI (Market Access) of the GATS, with respect to international public voice telephone services (CPC 75212);

Referring to the explanatory note presented by Albania and circulated on 21 November 2003;

Taking into account the exceptional circumstances arising in Albania as a result of the war in Kosovo, which caused substantial direct damage to the Albanian economy, thereby creating disruption in and serious impediments to the government's ability to implement planned economic reforms and programs, including the full implementation of its GATS Article XVI commitments regarding international public voice telephone services;

Considering that Albania has requested a brief waiver to implement the commitments cited above and hereby commits itself fully to implement its GATS commitments by 1 January 2005;

Taking note of the foregoing exceptional circumstances;

Decides as follows:

1. Subject to the terms and conditions set out hereunder, the commitments undertaken by Albania under GATS Article XVI (Market Access) with respect to international public voice telephone services (CPC 75212) are, with respect to the exclusivity granted to Albtelecom for the transmission through its network of these services, waived until 31 December 2004.

¹ Adopted in accordance with the Procedures on WTO Decision-Making under Article IX of the WTO Agreement agreed by the General Council (WT/L/93).

2. Albania will, upon request, promptly enter into consultations with any interested Member with respect to any difficulty or matter that may arise from the waiver of the commitments covered by this Decision. Where any such Member considers that its benefits under the GATS are or may be impaired unduly as a result of measures put in place by Albania and covered by this Decision, such consultation shall examine the possibility of action for a satisfactory adjustment of the matter.

3. This decision shall not preclude the right of a Member to have recourse to Articles XXII and XXIII of the GATS.

4. No later than the last formal meeting of the Council for Trade in Services in 2004, Albania shall provide a status report on its preparations to fulfil its GATS commitments.

ANNEX II

Excerpts from Albania's Schedule of Specific Commitments

Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
For all sub-sectors of telecommunication services	<p>1) & 3) Albanian Telekom (AT) has exclusive rights for fixed telephony except in rural areas. No limitations from 1 January 2003.</p> <p>4) Natural persons cannot provide telecommunication services in Albania if they are not registered as juridical persons.</p>		The Government of Albania will publish the rules and regulatory policy regarding further competition in the field of basic telecommunication services. The attached reference paper on regulatory principles is incorporated as additional commitments by the Republic of Albania
International public voice telephone services (75212)	<p>1) None.</p> <p>2) None.</p> <p>3) None as of 1 January 2003.</p> <p>4) Unbound, except as indicated in the Horizontal Commitments and the horizontal section of the telecommunications sector.</p>	<p>1) None.</p> <p>2) None.</p> <p>3) None.</p> <p>4) None.</p>	

ANNEX III

ALBANIA'S REFORMATORY POLICIES TOWARDS FULL LIBERALISATION OF THE TELECOMMUNICATION SECTOR

1. The Government of Albania is totally committed to carry out deep trade reforms aiming at the restructuring of Albanian economy, a necessary step towards the integration of the country in the international dimension. These reforms are (are being strictly implemented with satisfactory results, especially in terms of trade liberalisation of goods in the Balkans, with a view to establish a free trade area in the region. This shall serve as a first step towards the extension of the free trade zone to the European Union, thus guaranteeing the successful integration of Albanian goods into the European market.

2. Somewhat different is presented the situation in trade in services that is less developed owing to the lack of our experience in this field and to the characteristics and differences of services that influence the modes of international trade transactions. Nevertheless, even in this field, in cooperation with international organizations, we are making efforts to further liberalise trade in services, initially through regional integration policies, and in this respect the role of telecommunications is essential for the economy of a country, not only as a sector on its own right but also as a facility for the development of other services sector and the entire economy, domestic trade and the enrichment of citizens' life.

3. To guarantee successful reforms in the frame of full liberalisation of such an important sector such as the telecommunication, circumspection and carefully studied steps towards privatisation of the fixed telephony company Altelecom SH.A. are required. As the experience of other developed countries indicates, this sector is characterized by national monopolies privatised afterwards but before the liberalization. Therefore, the Government strategy related to this sector provides that this company, after the privatisation process, should enjoy a period of exclusivity, in order to undergo a process of modernisation and to become more efficient with a view to respond positively to competition of a future fully liberalised market.

That is why, by means of this letter I take the opportunity to address the Members of WTO, the request to grant Albania a waiver for the obligation related to the liberalisation of the international public voice telephone services based on the network of the company Altelecom SH.A. and the implementation of the commitment in the year 2005. This request is presented based on Article IX, paragraph 3 and 4 of the Marrakech Agreement Establishing the World Trade Organisation.

I. WHAT IS THE ALBANIAN GOVERNMENT STRATEGY AIMING AT IN THE FRAMEWORK OF THIS SECTOR

- (a) The Government of Albania puts the development of this sector on the basis of the Policy Paper for the Development of the Telecommunication Sector aiming at:
 - (i) The sustainable and long-term development as well as the growth of the economic efficiency, through the restructuring of the sector.
 - (ii) Increase of market efficiency through the promotion of the competition – as a power for an optimal utilisation of capitals - and through a number of

deregulations, market liberalisation and the institutionalisation of regulatory entities.

- (iii) Attraction of foreign private capitals as an important factor for the economic growth, through investment not just in monetary terms, but also in terms of managerial skills, international financial and capital market access, as well as strategic alliances in the world market.
 - (b) The Policy Paper for the Development of the Telecommunication Sector in the Republic of Albania constitutes the first step in materialising the Government's objectives for the privatisation of mobile phone company Albanian Mobile Communication – AMC and of the Albtelecom SH.A., and it establishes deadlines for the conclusion of this process.
 - (c) The privatisation of these companies is an objective of the strategy of the privatisation, approved by law No. 8306 dated 14.03.1998: "On the strategy for the privatisation of the sectors of special importance", a process carried out by international consultancy, in the framework of the World Bank project "Consultancy for the privatisation of strategic sectors".
4. The abovementioned Policy Paper provides that the privatisation process of AMC should begin as soon as possible and finish within 1999. Immediately afterwards within 2000 the privatisation of Albtelecom SH.A. should terminate too.
5. Concerning the issue of exclusivity, the Policy Paper for the Development of the Telecommunication Sector in the Republic of Albania specified that Albtelecom SH.A. should be given an exclusive right to offer national and international telephony services and local telephony services in the urban zones based on its own network, until December 31, 2002, thus around three years and a half from the time the document was approved; or bearing in mind that according to this document, the privatisation of Albtelecom SH.A. should terminate within 2000, the strategic partner would enjoy a two-years period of exclusivity.

II. EVOLUTION OF PRIVATISATION AND RESTRUCTURING PROCESS OF THE SECTOR

- (a) As a result of investors' insecurity due to the Kosovo war, the privatisation of the AMC was postponed and was in fact finalised in July 2000. At this moment the bid on the second cellular license was announced, a process that was finalised in January 2001.
- (b) The postponement of the privatisation of the AMC brought about the postponement of the privatisation for Albtelecom SH.A. and the bid projected to finish within 2000, was announced only in January 2002.
- (c) In addition, Albtelecom SH.A. did not go through a privatisation procedure for other reasons related to the bad situation in the international market of telecommunications as a result of:
 - (i) September 11-th 2001 attack in New York that had a effect on the breakdown of the international financial market in general and on that of telecommunications in particular;
 - (ii) Increase of expenses of international companies in the systems of third cellular generation and their concentration on these technologies during this

period coupled with a lower interest of the international telecommunication operators in the extension of their fixed telephony market. (Bankruptcy or the way towards bankruptcy of some global operators of telecommunications was the consequence of these factors).

- (d) Moreover, the tariffs re-balancing program did not begin until September 2001, although projected in 1999 and it will therefore conclude only in 2005.

Under these circumstances, and considering that no interest is expressed so far in the privatisation process of Albtelecom SH.A., we esteem that the postponement of exclusivity will increase the interest of potential operators, who at this moment would feel protected from an eventual competition and be encouraged to invest.

III. MEDIUM-TERMS TARGETS AND STEPS TO BE UNDERTAKEN FOR THEIR FULFILMENT

- (a) Increase of the number of fix line telephony to 450.000 – 500.000 subscribers in 2005, corresponding to approximately 15% of telephonic penetration. Actually, the telephonic penetration counts for 220.000 subscribers or approximately 8%.
- (b) Extension of access in telecommunication services for rural areas through private operators' investments.
- (c) Improvement of quality of the service to the level of international standards.
- (d) Prices for public telecommunication services should go towards the real values.
- (e) In the medium-term, promotion of the supply of new services such as Internet; the objective is to offer it initially to around 100.000 subscribers, the long-term objective being 300.000 subscribers.

IV. CONCRETE STEPS

6. The new Decision of the Council of Ministers No.464 dated July 3, 2003 "On some changes to the Decision No.288 dated June 18,1999 "On the approval of Policy Paper for the Development of the Telecommunications in the Republic of Albania, in the paragraph "Privatisation", it is stated:

"Albtelecom SH.A. shall enjoy an exclusive right to supply international telephony services based on its own network until December 31, 2004 as a compensation for its investment commitments."

In the paragraph "Liberalisation" it is specified that "International telephony services shall be open to competition in 2005".

7. This decision takes away from Albtelecom SH.A. exclusivity rights for national telephony services, which, by the Decision of the Council of Ministers No.692 dated December 27, 2002 was extended at least until June 30, 2003. Only exclusivity for international telephony services will be maintained.

8. Albtelecom SH.A. will be given the third GSM cellular license, to be supplied by a new company whose sole shareholder shall be Albtelecom SH.A. According to the law, this company will conclude an agreement with Albtelecom SH.A. in equal conditions with other operators in the market.

V. CURRENT SITUATION IN THE ALBANIAN MARKET

9. This last couple of years, the telecommunication market structure has changed quite a lot, especially in the mobile telephony sector. In real figures, from June 2000 (when the state cellular company Albanian Mobile Communication – AMC, was privatised) until July 2001 (when the second cellular operator Vodafone entered the market) the mobile telephony market has increased considerably: from 20.000 subscribers to a number of 800.000 (both companies together), whereas Albtelecom SH.A. has only 220.000 subscribers.

VI. REASONS LEADING TO THIS SOLUTION

10. The Policy Paper for the Telecommunications Development considers the privatisation of Albtelecom SH.A. a key element to the development of the fix line telephony. This process will be implemented in combination with the market liberalisation process, aiming not only at the privatisation of the company but also at the development of the whole national market. Due to unfavourable conditions in the international market of telecommunications, this process could not be carried out; that is why exclusivity is intended to create conditions for a potential augmentation of the efficiency of Albtelecom SH.A., which will be offered to the strategic partner.

11. Extension of exclusivity is a compensation offered to Albtelecom SH.A. in exchange for its obligation to invest, imposed on this operator by the Government, according to which Albtelecom SH.A. is obliged to install by the end of 2005, 450.000 – 500.000 fix telephony lines; not less than 5% of these lines must be installed in rural areas. Furthermore, within 2005, it has to install in every commune centre at least 30 telephony lines instead of 4 operating today.

12. Some tasks and processes directly influencing social effects of market openness have been postponed i.e. the tariffs re-balance the conclusion of which was postponed by the end of 2005. This process obliges Albtelecom SH.A. to maintain a certain tariff scheme defined by the Government according to a price cap formula. Under these circumstances, it is proved indispensable that until the conclusion of the tariff re-balance process Albtelecom SH.A. should maintain its exclusivity in the international telephony, a considerable part of its incomes. Actually, incoming and outgoing international cellular traffic generates 30% of the total income of Albtelecom SH.A. while 78% of total traffic mobile – fix and fix – mobile, is international.

13. According to an analysis effectuated by privatisation consultants, market liberalisation of long distance service would have a double impact on the performance of Albtelecom SH.A. causing:

- (a) Price reduction
- (b) Loss of capitals market

14. This analysis points out that liberalisation will lead to about 6% price reduction per year, during the first and the second year, over the general reduction of 5% estimated from the tariff re-balance plans. As far as the capital market is concerned, a 15% loss is foreseen during the first year and a 60% the second year following liberalisation.

15. As a result, the combination of market liberalisation of incoming and outgoing international cellular traffic and the market of long-distance services, may lead up to a reduction of Albtelecom SH.A. incomes by 8% during the first year and by more than 30% on the second.

16. Termination of Albtelecom SH. A. exclusivity in urban and national fix telephony and the extension of its exclusivity in international telephony service does not impede domestic and direct foreign private investments; they only channel those investments towards construction of local infrastructure. The overcome of the current stage where the country is actually, with only 8% penetration of fix telephony, requires considerable investment on local networks.

17. Taking into account that the Government took measures for further market liberalisation (removal of Albtelecom SH.A. exclusivity in fix telephony services in urban areas), aiming at a step by step liberalisation of international traffic, introduction of a third mobile operator in the market shall bring new values to the company and shall ensure its better representation in the telecommunication market – fixed and cellular service – raising thus the interest of foreign strategic investors.

18. At the same time, granting of this license will increase competition that serves as an engine for the further development of the cellular market and will prepare the company during the exclusivity period to face the competition of two other cellular operators.

19. According to law, the new company will also be part of the sale package of Albtelecom SH.A. Not less than 51 but not more than 76% of the shares of this new company providing ground mobile public telephony service shall be offered for sale to the strategic partner. The cellular service will be offered by a new company in order to separate the fix telephony activity from the cellular telephony one, avoiding thus subsidization for cellular and fixed services and assuring that operators in the market will operate on the same conditions.

20. The experience of other countries shows that strategic investors have been granted a minimum period of two years between the privatisation and the liberalisation. For example, the telecom companies of Montenegro and Macedonia, have been privatised in July 2002 (51% of the package); for the first the exclusivity period is not defined yet, as for the second, the termination of exclusivity date is December 31, 2004 and the liberalisation of fix telephony services is set on January 1, 2005. In addition, Bulgarian Telecom company was privatised in August 2000 (65% of the package) and Bulgaria has not provided any expiry date for the exclusivity and liberalisation of fix telephony services in the Specific Commitments Schedule in the WTO, document GATS/SC/122.

21. Based on these arguments and on the new developments concerning gradual elimination of exclusivity for Albtelecom SH.A., and taking into account that liberalisation is an irreversible process that generates great benefits for our economy, I would like to clarify that the term “modification of commitment” that is used in the letter addressed to the Director General of the WTO, does not refer to changes of the commitments that Albania has undertaken in the telecommunication sector, it does really mean “a temporary freeze” of these commitments to implement them in the year 2005.

To summarise, the Government of Albania has not any intention to modify or to withdraw the commitment for the liberalisation of the telecommunication services in the Schedule of Specific Commitments; it only requests a temporary freezing of its implementation.

22. In spite of the actual progress of the privatisation process, the final objective of the Government for the telecommunications, as defined not only in the Policy Paper but also in the Law “On telecommunications in Albania”, is the full liberalisation of telecommunication sector. This is clearly presented by the gradual liberalisation policy of telecommunication sub-sectors such as cellular telephone services, public local telephone service in rural areas, internet services, and finally removal of exclusivity rights of Albtelecom SH.A. for public voice telephone services in urban areas and public long distance voice telephone services thereby paving the way for liberalisation even for those services.

23. The Albanian Government, determined to continue the liberalisation reforms towards the integration of the country in the global international trade, expresses its confidence that, in compliance with its own legal framework and rules, the World Trade Organization will understand and will approve its request.

24. On this occasion, please allow me to express my highest appreciation for the continuous support and the cooperation that the World Trade Organization has provided to Albania.

Sincerely,

ARBEN MALAJ

MINISTER

HEAD OF NEGOTIATING TEAM TO THE WTO
