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**DECISION no. 107/31.03.2004**  
**Regarding the authorization of the State aid specific allocation to be granted to S.C. Antena 1 S.A. as part of the existing State aid scheme contained by the Governmental Emergency Ordinance no. 40/2002 for the recovery of budgetary arrears, approved and amended by Law no. 491/2002**

**THE PRESIDENT OF THE COMPETITION COUNCIL,**

**Based on:**

1. Decree no. 57/2004 for appointing the Competition Council's members;
2. The provisions of the Competition Law no. 21/1996, with subsequent amendments and completions;
3. The provisions of the Law no. 143/1999 on state aid, with subsequent amendments and completions;
4. The Regulation regarding the organization, functioning and procedure of the Competition Council, published in the Official Gazette no. 50 bis, Part I of 25.03.1997, with subsequent amendments and completions;
5. The Regulation on regional state aid and state aid for SMEs, published in the Official Gazette, Part I, no. 470/02.07.2002;
6. The notification of the State aid specific allocation to be granted to S.C. Antena 1 S.A. as part of the existing State aid scheme contained by the GEO no. 40/2002 for the recovery of budgetary arrears, approved and amended by Law no. 491/2002 submitted by the National Cinematography Center, under Note no. 655/26.03.2004, registered at the Competition Council as no. RS-AS 31/26.03.2004, that became effective on 30.03.2004.

**Based on the following:**

**1.** The notified State aid represents a specific allocation within the existing scheme, contained by the GEO no. 40/2002 for the recovery of budgetary arrears, for which Competition Council requested the notification.

**2.** Under the conditions of the GEO no. 40/2002, the National Cinematography Center will grant to Antena 1 SA, for a 32 months period, during April 2004 – November 2006, the payment scheduling of the amount of ROL 19,477,931 thousands, of which :

- ROL 12,358,440 thousands – overdue debts representing the contribution of 3% at the Cinematographic Fund;
- ROL 7,119,491 thousands – supplementary charges and penalties for payment delay afferent to the debts.

In the basis of the score obtained by SC Antena 1 SA in the evaluation of the economic – financial criteria provided by GEO no. 40/2002, the company may benefit also from the payment exemption of 75% from supplementary charges and penalties for payment delay in amount of ROL 10,554,346 thousands, afferent to the debts recorded until 31.12.2001 and calculated until 08.04.2002. The exemption shall be operated only if the payment deadlines and the conditions mentioned in the scheduling will be observed.

According to the provisions of Law no. 143/1999 on State Aid, with subsequent amendments and completions, the value of the supplementary charges and penalties for payment delay that may be exempted from payment, under the provisions of GEO no. 40/2002, in quantum of ROL **7,915,760 thousands** represents State aid.

**3.** The non-observance of the payment deadlines and of the conditions, under which there were approved the payment facilities, generates their annulment, beginning immediately and continuing, by case, the forced execution for the entire not-paid amount and the obligation to pay the interests calculated as of the date the deadlines and/or conditions were not respected.

**4.** To the company Antena 1 S.A. there was granted in 2002, under GEO no. 40/2002, the scheduling for payment for at longest 21 months, without grace period, of the amount of ROL 52,374,565 thousands, representing obligations, supplementary charges and penalties for payment delay owed to the State budget at 31.12.2001 and the postponement of the payment, in order to exempt at the end of the scheduling period, supplementary charges

and penalties for payment delay in amount of ROL 37,823,947 thousands, afferent to the budgetary obligations overdue at 31.12.2001.

S.C. Antena 1 S.A. obtained, following the assessment carried out by the Ministry of Public Finances, of the economic – financial performance criteria provided for in GEO no. 40/2002, a score which allows a 100% exemption of the supplementary charges and penalties for payment delay.

S.C. Antena 1 S.A. observed the conditions under which the scheduling was granted, paying in advance the payment installments at 31.12.2003. As a consequence, the Ministry of Public Finances approved the payment exemption of the amount of ROL 37,823,947 thousands, representing supplementary charges and penalties for payment delay.

According to the provisions of Law no. 143/1999 on State Aid, the payment exemption in the amount of **ROL 37,823,947 thousands** granted to SC Antena 1 SA, respecting the Covenant no. 33/07.08.2002 signed with the Ministry of Public Finances constitutes State Aid.

Within the meaning of art. 23 of GEO no. 40/2002 it results that for this State aid granted by the Ministry of Public Finances the obligation to notify to the Competition Council did not exist, being under the ceiling of ROL 50 billion provided by the Ordinance.

**5.** The relevant market affected by the State aid granting is the market of TV shows production, the geographic market being the entire Romanian territory.

**6.** The analysis of the notified measure was achieved according to the State aid granting criteria contained by Regulation on regional State aid and State aid for SMEs.

**7.** During April 2004 – December 2006, SC Antena 1 SA will develop an investment program for modernizing its technical base.

The investment plan, which will be achieved by SC Antena 1 SA, contains the following objectives, with the corresponding breaking down of the concerned costs:

- a) Purchasing one technical broadcast control room complete digitalized and with both functioning possibilities: analogue and automatic. Producer: Thompson-Grass Valley Group, cost: **Euro 681,000;**
- b) Purchasing the equipments for the technical control room dedicated exclusively to the news programs. Producers: Thompson – Grass Valley Group, Sony, Soundcraft, cost: Euro 845,000;

- c) Purchasing equipments necessary for the outside news and editing department. It was considered that there are necessary 20 sets made of camcorder/ camera, sativa, lens, accumulators, accumulator loaders, lights case, rain cover, protection and transport boxes. Producer: Sony company, cost: Euro 281,100;
- d) Purchasing a central server with high resolution for the automatisation of the commercials, promos and news broadcasting, but with possibilities to pre-edit in low resolution. Producer: Omneon, cost: Euro 440,000;
- e) Purchasing 6 units for non-linear NLE editing, DV compression and soft for ingests management in server of the DLE lists and of the archiving decisions. Producer Apple & Unix, cost: Euro 110,000;
- f) Purchasing 5 units for linear editing, format DVCAM with cassettescopes SONY, type DSR 1600P and DSR2000P. Producer Sony, cost: Euro 129,000;
- g) Purchasing of 19 parts. Cassettescopes DVCAM, type DSR1500P, cost: Euro 162,000;
- h) Purchasing one voice processor & imitators/ compressor. Producer Denon, cost: Euro 12,700;
- i) Purchasing one unit of teleprompter with 5 displays compatible with ENPS soft. Producer Auto Q, cost: Euro 27,000;
- j) Purchasing 2 complex non-linear editing stations for producing promotional materials / spots. Producer: Pinnacle, cost: 63,000 euro;
- k) Purchasing one digital line for radio relay for 4 multiplex fascicules, necessary for the connection between Victoria 10 station and Antena 1 studio. Producer DB & Scren Service, cost: Euro 65,000;
- l) Upgrading the ground-satellite broadcasting station with equipments Scientific Atlanta of Power Vu Plus series in encoder sequence, multiplex, modulator and network/ station management, including 200 parts of satellite decoders. Producer Scientific Atlanta, cost Euro 350,000;

The total costs involved for carrying out the investments plan = EUR 3,165,800.

Total costs in ROL: Euro 3,165,800 x 40,000 ROL/euro = ROL 126,632,000,000.

**8.** The investment plan presented in the notification of the National Cinematography Centre, which SC Antena 1 SA commits itself to carry out during April 2004 – November 2006, meets all the conditions to be

considered an initial investment within the meaning of art. 5 para. (1) of the Regulation on regional State aid and State aid for SMEs.

As it results from the supplementary information provided within the notification form, the electronic equipments, which will be purchased by SC Antena 1 SA, according to the investment plan approved for 2004-2006, are destined to be used for developing the production capacities and the quality of services provided by the company.

The TV equipments, operating at present, will be distributed to territorial studios of Antena 1, where there will be further used at normal parameters.

The technological development and the acquisition of the last generation equipment will be made for central studios in Bucharest, as well for the most important territorial studios, in order to increase the number of broadcasting hours and to put into function other TV stations of SC Antena 1 S.A..

Thus, the investment plan excludes the investment for replacement, which art 5 para. (2) let. a) of the *Regulation on regional State aid and State aid for SMEs* refers to.

**9.** The local TV station network of Antena 1 operates based on the audio-visual and broadcasting licences obtained on the basis of the contests organised by the National Audio-visual Council (C.N.A.).

At present, the local TV station network of Antena 1 contains 23 local stations operating in 23 cities. During this year, the 24<sup>th</sup> Antena 1 station will start to broadcast in Giurgiu.

Excepting the Bucharest station that broadcasts the Antena 1 central (main) program, also broadcasted by satellite, the other 22 stations broadcast daily a local program of about 2 hours, produced in local studios of the respective cities, inserted according to a timetable by the Programs Department of the central station.

The local program produced and broadcasted by territorial stations is exclusively focused on people living in cities in which the respective Antena 1 territorial studio functions. This program contains:

- Local news (no news of national interest are broadcasted);
- Utilitarian information regarding the respective cities;
- Local economic information, including information on local investments;
- local sport information;
- information and debates about or with local administration;
- offers and information regarding the local labour force;

- political debates;
- cultural debates and information: theatre, literature, expositions, concerts, movies, etc;
- TV shows on agricultural issues, where it is possible;
- TV shows of local folklore;
- etc.

Within the notification form, it is stated that Antena 1 will further continue to apply the development policy to its local TV station network and implicitly to apply the policy for supporting the local programs production. This development is conditioned by the fulfilment of technical conditions for receiving audio-visual and broadcasting licences based on contests from the National Audio-visual Council.

The state aid beneficiary foresees that up to end of 2005, will own, on its behalf, a number of 30-32 local TV licences, meaning that in the first half of 2006, from the operational/functional point of view, the actual Antena 1 network could be developed up to 32 TV local stations.

The investments intended to be made by SC Antena 1 SA, according to the investment plan mentioned before, will lead to the promotion of cultural and linguistic diversity. Also, the transition from analogue to digital technology is a key factor for ensuring the access to an Informational Society, as well as for fighting against social and cultural exclusion.

**10.** All the costs of the notified investment plan are eligible for the State aid related to an initial investment, within the meaning of art.6 para.(2) of the *Regulation on regional State aid and State aid for SMEs*.

**11.** According to the project regarding the purpose and the costs necessary to the technical modernisation of Antena 1, it results that the necessary funds are up to ROL 126,632,000,000 for a period up to 31.12.2006.

The S.C. Antena 1 S.A. contribution from its own funds represents an amount of ROL 80,892,293,000 and results from:

- annual depreciation of ROL 12,000,000,000 x 3 years = ROL 36,000,000,000;
- the use of funds resulted from the establishment of the account “other reserves” = ROL 24,892,293,000;
- allocations from the profit of years 2004 and 2005 = ROL 20,000,000,000.

The beneficiary contribution to the achievement of the investment plan submitted in the notification is of 63.88%, observing thus the

provisions of art. 8 of the *Regulation on regional State aid and State aid for SMEs* stipulating that the beneficiary contribution for financing the investments must be at least 25%.

**12.** The value of the eligible costs is of **EUR 3,165,800**, equivalent of **ROL 126,623,000,000**.

The value of the state aid notified by the National al Cinematography Centre is of **ROL 7,915,760,000**.

The value of the state aid granted by the Ministry of Public Finances is of **ROL 37,823,947,779**.

Since the State aids granted by the two grantors mentioned before are destined to achieve the same investment objective, these are cumulated for setting up the intensity of the State aid that will be granted in order to carry out the notified investment plan.

Total state aid = **ROL 45,739,707,779**.

State aid gross intensity = 36.12 %

Therefore, the gross intensity of the state aid intended to be granted to SC Antena 1 SA is below the maximum admissible ceiling of 50%, provided by art. 9 of the *Regulation on regional State aid and State aid for SMEs*.

**13.** The investments contained by the Investment Plan, that SC Antena 1 SA commits itself to achieve, should be maintained for a period of minimum 5 years, as stipulated by art. 11 of the *Regulation on regional State aid and State aid for SMEs*.

**14.** Following the analysis, it was found that the State aid as payment exemption of supplementary charges for not paying in due time the obligations overdue at 31.12.2001 to the National Cinematography Centre calculated until 08.04.2002, in amount of **ROL 7,915,760 thousands**, meets the state aid granting criteria in accordance with the *Regulation on regional State aid and State aid for SMEs* issued by Order of the Competition Council's President no. 92/.2002, entered into force at 02.07.2002.

**15.** The information presented in the notification submitted to the Competition Council leads to the conclusion that the State aid specific allocation, part of the existing scheme represented by GEO no. 40/2002 for the recovery of the budgetary arrears, approved and amended by Law no. 491/2002 does not distort significantly the normal competitive environment and does not infringe the appropriate application of the Treaties to which Romania is party.

**16.** Within the meaning of art. 13 para. (1) of Law no. 143/1999 on State aid, Competition Council shall permanently survey all the existing state aids. If it will be found that this notified State aid specific allocation distorts significantly the normal competitive environment and the correct application of the Treaties to which Romania is party, Competition Council will request the state aid grantor to take appropriate measures for eliminating its incompatibility with the Law no. 143/1999 on State aid.

## **DECIDES**

**Art. 1.** Within the meaning of art. 12 para. (2) let. c) read in conjunction with art. 14 para. (1) let. f) of Law no. 143/1999 on State aid, with subsequent completions and amendments, authorizes with conditions the State aid specific allocation intended to be granted to S.C. Antena 1 S.A. as part of the existing scheme represented by GEO no. 40/2002 *for the recovery of budgetary arrears*, approved and amended by Law no. 491/2002, as State aid for regional development.

**Art. 2.** The authorization is conditioned by maintaining, for a period of minimum 5 years, the investments contained in the notified investment plan, which S.C. Antena 1 S.A. commits itself to carry out.

**Art. 3.** The State aid value is **ROL 7,915,760 thousands** and represents exemption from the payment of supplementary charges and of penalties for payment delay afferent to contributions owed to the National Cinematography Centre.

**Art. 4.** The present Decision becomes effective at the date of its communication or, if the case may be, of its publication.

**Art. 5.** In accordance with the provisions of art. 23 of the Law no.143/1999 on State aid, the National Cinematography Centre shall submit information regarding the granted State aids, for their inventorying and monitoring.



**Art. 6.** In accordance with the provisions of art.29 of the Law no.143/1999 on State aid, with subsequent amendments and completions, the present Decision may be appealed to the Bucharest Court of Appeal, division Contentious Administrative, within 30 days as of its publication or if the case may be, its communication.

**Art. 7.** The present Decision will be communicated by the Secretariat General of the Competition Council to:

- National Cinematography Centre, 4-6, Dem. I. Dobrescu Street, sector 1, Bucharest;

- S.C. Antena 1 S.A., 44 A, Ficusului Blvd., Sector 1, Bucharest.

**Art. 8.** The Secretariat General and the Department for State Aid Authorisation of the Competition Council shall pursue the fulfilment of this Decision.

**PRESIDENT**

**MIHAI BERINDE**