

DECISION NO. 170
of 2.06.2004

**on the notification of the Ministry of Public Finances for obtaining the
authorization of the State aid to be granted to
Regiei Autonome Judetene „Apa” Botosani**

PRESIDENT OF THE COMPETITION COUNCIL,

Based on:

- 1.** Decree no. 57/2004 regarding the appointment of the Competition Council's members;
- 2.** The provisions of the Competition Law no 21/1996, published in the Official Gazette no 88 – Part I, of April 30, 1996, with subsequent amendments and completions;
- 3.** The provisions of the Law no 143/1999 on State aid, published in the Official Gazette no 370/03.08.1999, Part I, with subsequent amendments and completions;
- 4.** The Regulation on organization, functioning and procedures of the Competition Council, published in the Official Gazette, no. 288, Part I of 01.04.2004;
- 5.** The Regulation on the form, content and other details of the State aid notification, published in Official Gazette no.125, Part I of 24.03.2000;
- 6.** The notification of the intention to grant State aid, submitted by the Ministry of Public Finances under Note no. 107661/19.03.2004, registered at the Competition Council as no. RS-AS 30/25.03.2004. The notification became effective as of the date the information was complete, mainly on 12.05.2004;
- 7.** The Note of the Department for State aid Authorisation on the notified State aid;

Based on the following grounds:

1. The financial support from which RA „Apa” Botosani (R.A.J.A.B.) will benefit, represents exemptions from the payment of interests and delay penalties afferent to budgetary obligations owed to the consolidated State budget, in total amount of ROL 55,275,654,646, granted by the Ministry of Public Finances to this Autonomous Regie, aiming at further providing the water supply and sewerage services.

2. R.A.J.A.B. is a company of local interest, subordinated to Botosani County Council which administers and exploits the public systems of drinking water and sewerage that belong to the public domain of the County. R.A.J.A.B. has been established under the Decision no. 9/29.03.1995 of Botosani County Council as provided under the Law no. 135/1994 for the approval of G.O. no. 69/1994 on some measures for the re-organisation of the local Regies Autonomous.

3. By Order no. 143/2003 of the National Authority for Municipal Services (A.N.R.S.G.C.): „it is approved the licence class 2 of the Regie Autonomous „Apa” Botosani for the public service of water supply and sewerage”(art.1).

4. The relevant product market is represented by market of public services of water supply and sewerage and the relevant geographic market is represented by the City of Botosani and the following localities: Bucecea, Falmanzi, Vaculesti, Braiesti, Stauceni, Stefanesti, Trusesti, Poiana-Flamanzi, Mihai Eminescu, Leorda, Costesti, Rachiti, Cismea-Rachiti, Baluseni, Draxini- Baluseni, Costinesti-Leorda of Botosani County.

5. The market of public services of water supply and sewerage is regulated, their prices and tariffs not being established on a free market, based on demand and supply, but being surveyed by the National Regulatory Authority for Municipal Services (ANRSC) and approved by the local public administration - Botosani County Council. According to art. 4 of G.D. no. 373/2002, A.N.R.S.G.C. elaborates and applies the regulation system, mandatory at national level, regarding the organisation, coordination and functioning of the municipal service sector, as well as of their markets”. According to art. 6 par. (1), among the tasks of A.N.R.S.G.C. it is mentioned „drafting the methodologies for establishing, adjusting and modification of prices and tariffs for municipality services”.

6. The “Regulation on organisation and functioning” of R.A.J.A.B., approved by Decree of County Council Botosani no. 99/29.10.2003,

stipulates that supplier of water and sewerage services is R.A.J.A.B., which administers and exploits the public services of drinking water and sewerage of Botosani County. These public services of local interest are provided through a public system of water supply and sewerage, which is part of the technical-urban infrastructure of the County and is its public ownership. R.A.J.A.B. is the only operator on the relevant geographic market, having thus a natural monopoly position. At present, there is no private company on the relevant market that can have the capacity to provide such service of public general interest.

7. Having in view that R.A.J.A.B. is the only administrator of the public system of water and sewerage in this geographic area, without any other competitor on the relevant market, the financial support to be granted to this company does not fulfil the selectivity criteria – one of the elements that characterise the State aid – and does not distort the competition.

DECIDES

Art.1. Within the meaning of art. 8 par. (2) read in conjunction with art.12 par (2) lit. a) of the Law no. 143/1999 on State aid, with subsequent completions, the financial support to be granted to R.A.J.A.B. does not constitute State aid since its purpose is the continuation of the of the water supply and sewerage services within Botosani County.

Art.2. The present Decision becomes effective at the date of its communication.

Art. 3. 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.

Art.4. The present Decision shall be communicated by the Secretariat General of the Competition Council to:

- Ministry of Public Finances, 17, Apolodor Street, sector 5, Bucharest;

- Autonomous Regie „Apa” Botosani, 56, Octav Onicescu Street, Botosani, Botosani County.

Art.5. The Secretariat General and the Directorate for State Aid Authorization of the Competition Council shall pursue the fulfillment of the present Decision.

PRESIDENT

MIHAI BERINDE