



R O M A N I A

CONSILIUL CONCURENTEI

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DECISION NO. 32
of 21.01.2004

regarding the authorization of the State aid specific allocation that is intended to be granted to S.C. SEPAROM S.A. Arad as part of the existing State aid scheme contained by Governmental Emergency Ordinance no. 40/2002 for the recovery of the budgetary arrears approved and amended by Law no. 491/2002

The Competition Council's Plenum,

Based on:

- 1.** Decree no. 1075/2001 on the appointment of the members of the Competition Council;
- 2.** The provisions of the Competition Law no. 21/1996, published in the Official Gazette no. 88, Part I, of 30.04.1996, with subsequent amendments and completions;
- 3.** The provisions of the Law no. 143/1999 on State aid, published in the Official Gazette no. 370, Part I, of 03.08.1999, with subsequent amendments and completions;
- 4.** The provisions of the Governmental Decision no. 599/2000 for the approval of the procedures for reporting, monitoring and informing in the application of the Law no. 143/1999 on State aid, published in the Official Gazette no. 340, Part I of 21.07.2000;
- 5.** 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;
- 6.** 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;
- 7.** The Regulation on State aid for rescue and restructuring the firms in difficulty, published in the Official Gazette, Part I, no. 470/02.07.2002;

8. The notification of the State aid specific allocation to be granted to S.C. SEPAROM S.A. Arad as part of the existing State aid scheme contained by the GEO no. 40/2002 for the recovery of the budgetary arrears, approved and amended by Law no. 491/2002, submitted by the Ministry of Public Finances by Letter no. 293220/19.12.2003, registered at the Competition Council as no. RS-AS 86/19.12.2003, became effective at the date of its registration;
9. The Note of the Department for State aid Authorization concerning the notified State aid.

Based on the following:

1. The notified State aid represents a State aid specific allocation within the existing State aid scheme, contained by GEO no. 40/2002 for the recovery of the budgetary arrears.
2. The granted payment facilities refer to the payment exemption of the interests and penalties for payment delay afferent to the overdue budgetary obligations at 31.12.2001 and calculated until 08.04.2002, in total amount of ROL 82,491,318,000.
3. According to GEO no. 40/2002, the non-observance of the payment deadlines and of the conditions under which the payment facilities were approved leads to their annulment, the beginning or continuation, by case, of the forced execution for the entire unpaid amount and the obligation to pay the supplementary charges for payment delay calculated as of the date the deadlines and/or conditions were not respected.
4. The relevant market is represented by the market of distribution/re-distribution of the drinking water in Arad County.
5. The analysis of the notified measure was carried out according to the criteria for granting State aids included in the Regulation regarding the State aid for rescue and restructuring firms in difficulty. S.C. SEPAROM S.A. Arad is a company in difficulty because it confronted several problems that negatively influenced the production and economic – financial activity, this fact resulting from the following considerations: the company records losses, the decrease of the turnover and the activity volume, the high volume of the

uncollected claims, the lack of liquidities, being noticed also an unfavorable evolution of the economic – financial indicators.

6. The State aid granting will allow S.C. SEPAROM S.A. Arad to carry out the restructuring plan, ensuring thus the maintaining and the economic straighten of the company. This plan includes several measures that will have as effect the reduction of the costs, obtain of incomes and increase of returns.

7. At economic – financial level, the positive effects of the restructuring plan will be recorded in the following years. These will start from the creation of the premises for paying the overdue obligations and the related interests for which the rescheduling was requested and will end with the increase of the financial flows ensuring both the creation of financial sources necessary for re-technology and modernization, further development of the company, and the normal development of the production activity.

8. The restructuring cost of S.C. SEPAROM S.A. Arad is of ROL 111,962,795,314, where the participation of the company in financing the Restructuring Plan is of ROL 29,471,477,314, representing 26.32% of the total financial effort.

9. The applied restructuring measures will lead to the elimination of those activities generating losses for SEPAROM and, as it is specified in the notification form submitted by the Ministry of Public Finances, will not have as effect the subsequent increase of the production capacity.

As the market share of S.C SEPAROM S.A at the level of Arad County is 10%, the normal competitive environment will not be significantly distorted.

10. The State aid is limited at the minimum necessary and will be used only for restoring the viability of the company, not allowing the beneficiary, during the application of the Restructuring Plan, to increase the production capacity. The granting of the State aid ensures the economic restoration of the company during a short period of time, the production capacity being reduced at the optimum operating conditions. Thus, the provisions under art. 14 of the Regulation on State aid for rescue and restructuring the firms in difficulty are met.

11. The requested State aid does not distort competition and does not lead to an excess of liquidities that could be used in aggressive activities affecting the market without any relation with the restructuring process.

12. S.C. SEPAROM S.A. Arad has not received before aid for restructuring, thus being met art. 18 of the Regulation on State aid for rescue and restructuring the firms in difficulty, stipulating that the aid for restructuring must be granted only once.

13. The information included in the notification submitted to the Competition Council lead to the conclusion that the State aid specific allocation as part of the existing scheme contained by GEO no. 40/2002 for the recovery of the budgetary arrears approved and amended by Law no. 491/2002 does not significantly affect the normal competitive environment and does not infringe the proper application of the international treaties to which Romania is party.

14. In the meaning of art.13 par. (1) of Law no. 143/1999 on State aid, the Competition Council will permanently survey all the existing State aids, and if it is noticed that the State aid scheme contained by GEO no. 40/2002 for the recovery of the budgetary arrears or specific allocations within this distort significantly the normal competitive environment and the proper application of the international treaties to which Romania is party, 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 par. (2) let. b) read in conjunction with art. 14 par. 3 let. c) of Law no. 143/1999 on State aid, it is authorized the State aid specific allocation intended to be granted to S.C. SEPAROM S.A. Arad as part of the existing State aid scheme contained by the GEO no. 40/2002 for the recovery of the budgetary arrears approved and amended by Law no. 491/2002, as restructuring State aid.

Art.2. The value of the State aid to be granted is of ROL 82,491,318,000.

Art.3. The present Decision becomes effective at the date of its communication.

Art.4. According to the provisions of art. 29 of the Law no. 143/1999 on State aid, the present Decision can be appealed within 30 days as of its communication before the Bucharest Court of Appeal.

Art.5. The present Decision shall be communicated by the Secretariat General of the Competition Council to:

- the Ministry of Public Finances, 17 Apolodor Street, sector 5, Bucharest;
- S.C. SEPAROM S.A., 274 Calea Aurel Vlaicu Street, Arad, Arad County.

Art.6. The Secretariat General and the Directorate for State Aid of the Competition Council shall pursue the fulfillment of the present Decision.

PRESIDENT

THEODOR VALENTIN PURCAREA