

**DECISION No. 122/07.07.2005**

**regarding  
the guarantee intended to be granted by the Ministry of Public Finance  
to S.C. HIDROELECTRICA S.A.**

**The Competition Council,**

Having in regard the provisions of the Presidential Decree no. 57/2004 for the appointment of the Competition Council' members,

Having in regard the provisions of Competition Law no. 21/1996, published in the Official Journal of Romania, Part I, no. 88 / 30.04.1996, with subsequent amendments and completions,

Having in regard the provisions of Law no. 143/1999 on state aid, published in the Official Journal of Romania, Part I, no. 370/03.08.1999, with subsequent amendments and completions,

Having in regard the provisions of the European Agreement establishing an association between Romania, on the one hand, and the European Communities and their Member States, on the other hand, ratified by Law no. 20/1993, published in the Official Journal of Romania, Part I, no. 73/12.04.1993,

Having in regard the provisions of the Regulation on regional state aid, published in the Official Journal of Romania, Part I, no. 340/19.04.2004, with subsequent amendments and completions,

***On the following grounds,***

**1. PROCEDURE**

- (1) The Ministry of Public Finance has notified, by letter no. 107511/11.04.2005, registered at the Romanian Competition Council with no. RS – AS 15/13.04.2005, under *Art. 6 of Law no. 143 / 1999 on state aid, with subsequent amendments and completions*, the financial support measure which is intended to be granted to SC HIDROELECTRICA SA.
- (2) Based on Art. 6 (4) of Law no. 143/1999 on state aid, with subsequent amendments and completions, supplementary information have been requested, by letters no. DAAS/373/25.04.2005, no. DAAS/437/16.05.2005, and no. DAAS/564/13.06.2005. Notification became effective when information were accurate and complete, namely on June 20, 2005.

## **2. DESCRIPTION OF THE MEASURE**

The measure consists of a guarantee granted by the Romanian state to SC Hidroelectrica SA.

### **2.1. The beneficiary**

- (3) The beneficiary of the state financial support measure is SC HIDROELECTRICA SA, company established by reorganizing the National Company of Electricity SA, based on the GD no. 627 / 2000.
- (4) The registered capital of the company is of ROL 39,625,889 thousands and it is entirely owned by the Romanian State, as sole shareholder, by the Ministry of Economy and Commerce.
- (5) By the end of 2004, the company has registered a gross profit of ROL 736,921M, related to a turnover of ROL 14,260,414 M, and an average employees' number of 5016 persons; thus, it is considered as a large company accordingly to the Regulation on state aid for SME.
- (6) The company has 127 power stations and 4 pumping energetic stations, which has a total installed power of 5,928 MW. SC HIDROELECTRICA SA has 8 branches for electricity production (SC Hidroserv Bistrita, SC Hidroserv Cluj, SC Hidroserv Arges, SC Hidroserv Hateg, SC Hidroserv Portile de Fier, SC Hidroserv Ramnicu-Valcea, SC Hidroserv Sebes, SC Hidroserv Slatina), and 12 subsidiaries.
- (7) The main company' activity, namely the electricity producing, represents a public service of general economic interest, entrusted to it by the license granted by the National Authority of Regulation in the field of Energy ("ANRE").
- (8) SC HIDROELECTRICA SA has as its object the production and sale of electricity, by using hydro-resources. Besides these, the company is also performing:
  - system services<sup>1</sup> for adjustment frequency – power, tension, ensuring of the static and dynamic reserve, etc., for the National Energetic System;
  - administering services of waters of national and local interest – protection against floods, water supplying sources;
  - modernizations of the existing energetic installations, building – fitting works, overhauling and major overhauls at the energetic generating sets and installations, as well as at the specific working and mechanical devices;
  - sluicing the river ship on the Danube<sup>2</sup>, river transport and navigation in its own area, and transshipping of goods between ships and road vehicles, by the available capacities from the Danube canal locks.

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<sup>1</sup> System service represents the service ensured for maintaining of the safety functioning level of the electro-energetic system, as well as of the quality of electricity, accordingly to the in force standards, practically meaning covering of the consumption schedule peak of the system.

<sup>2</sup> The sluicing river ship activity consist in the passing from upper side of the river to the lover side, through the section of a sluice dam; this transiting can be done only with the help of some special installations which set up or down the ship.

- (9) In this context, the obligations of SC HIDROELECTRICA SA, as electricity producer, according to art. 30 of Law of Electricity no. 318 / 2003, are the following:
- to insure the electricity deliveries, respectively heating produced in co-generation and the system technological services, with the fulfillment of the criteria imposed by licenses, contract clauses and regulations in force;
  - to offer in undiscriminating conditions the whole available electrical power, as well as system technological services;
  - to maintain a stock of fuel at a sufficient level or, after case, a sufficient water supply, in order to carry on the obligations to continuously produce and supply electrical and heating as provisioned by the regulations in force;
  - to comply from an operational point of view with the transport and system operator's demands and to establish, after case, its own operative management positions.

## **2.2. Romanian electricity sector**

- (10) The relevant product market is represented by the market of the electricity production. This market consists of two segments:
- the regulated segment;
  - the competitive segment.
- (11) The regulated market of electricity and of connected services is functioning by means of commercial contracts, with prices regulated by the competent authority, which is establishing, at the same time, the quantities to be agreed upon by the producers and the suppliers of the captive consumers, within the whole selling transactions.
- (12) The competitive electricity market is functioning on the basis of:
- a. bilateral contracts, negotiated by the electricity producers with the suppliers;
  - b. bilateral contracts, negotiated by the electricity suppliers with the eligible consumers;
  - c. import and export contracts for electricity;
  - d. transactions by auctions, on the spot market;

The price of the electricity sold on the competitive market is free-established, based on direct negotiation, but within the limit of a certain ceiling settled by ANRE.

- (13) The market regulatory authority is ANRE, which issues licenses, authorizations, prices and tariffs decisions. According to the internal market development, and / or to its integration into the international markets, ANRE is obliged to decide the gradual opening of the regulated activities to competition, entirely or partially. The opening of the market is achieved by the progressive increasing of the competitive market' weight, accordingly to the provisions of the energetic strategy and policy.
- (14) Aligning itself to the EU objectives concerning the entire opening of the market until 2007, ANRE has established, on an annual basis, starting from 2000, a certain degree of the market opening, by increasing the eligible consumer's number. At the end of 2004, the market opening degree was of 55%.

- (15) SC HIDROELECTRICA SA has operated on the competitive market from 2000, when have appeared the first licensed eligible consumers, with which it has concluded contracts with negotiated price. The quantity sold on the competitive market, in 2004, was of 50.6% out of the total production of electricity.
- (16) SC HIDROELECTRICA SA market share is of 30%. On the regulated segment, it owns a 20% share, and on the competitive one, it owns 55%. It is to be mentioned that SC HIDROELECTRICA SA is the sole company on the Romanian market, which is producing electricity in the hydro system.
- (17) The main competitors of SC HIDROELECTRICA SA, on the internal market, are: SC Electrocentrale Bucuresti SA, SC Electrocentrale Turceni SA, SC Electrocentrale Rovinari SA, SC Electrocentrale Deva SA, SC Complexul Energetic Craiova, SC Termoelectrica SA, SC Nuclearelectrica SA. These are producing electricity based on coal, natural gas, nuclear fuel.
- (18) SC HIDROELECTRICA SA is producing electricity both for the internal market, and for export. On the internal market, the electricity produced by SC HIDROELECTRICA SA is supplied to the branches SC Electrica SA from Moldavia, Dobrogea, North Transilvania, South Transilvania, South Muntenia, North Muntenia, Banat, Oltenia. The company is exporting electricity in Greece, Serbia, Montenegro, Hungary, Albania, and Macedonia.

## **2.3 The Investment Project “Modernization of equipment at the Power Station Lotru-Ciunget” (herein after “Project”)**

- (19) The purpose of the investment is to modernize the power station at Lotru-Ciunget. This is necessary, in order to meet the current quantitative and qualitative requirements of the electricity market. As well, the worn-out of the equipment and installations appears, because of the long period of their exploiting. In this context, the current technical state might lead to future incidents and desertions of large proportions, with serious impacts on both the safety and continuity of the production process, and the quantity of electricity delivered by the company at the regional and national level.

### **2.3.1. History of the power station**

- (20) The Hydro Power Station Lotru-Ciunget is situated within the perimeter of Ciunget village, Valcea County, the South-West Oltenia development region, at 140 m under the thalweg of Latorita river; it is the biggest power station on the internal rivers, having an essential role within the National Energetic System.
- (21) Thus, the power station is designed to function at the peak of charge curves, ensuring 60% of Romania’s system services, and it supplements the adjustment offered by the other power stations on the internal rivers, as it is the sole which can entirely cover the adjustment band<sup>3</sup>. At the same time, it accomplishes the function of intervention power station for damage cases.

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<sup>3</sup> The adjustment band represents the power interval planned to function within each group of the power station.

- (22) The power station, set in the period 1972-1975, is equipped by three vertical synchronous hydro-generating sets, which have a rather high degree of obsolescence.
- (23) Taking into account the importance of the power station within the National Energy System, based on the feasibility study and on the cost-profit analyses achieved by the Institute of Hydro-energetic Studies and Designs, SC HIDROELECTRICA SA will implement the Investment Project.

### 2.3.2. Financing of the Project

- (24) The value of the Project is of Euros [...]<sup>4</sup>, out of which:
- expenses for design and technical assistance, for the building site organization, commissions and taxes: Euros [...]<sup>5</sup>;
  - expenses for the essential investment: Euros [...]<sup>6</sup>.
- (25) The investment project is financed by:
- an International Bank for Reconstruction and Development ("IBRD") loan, State guaranteed, in value of Euros [...]<sup>7</sup>;
  - own sources of SC HIDROELECTRICA SA, in value of Euros [...]<sup>8</sup>.
- (26) The essential investment aims the modernization of all installations and equipment of the power station, namely:
- mechanical equipment and installations;
  - electric equipment and works;
  - environmental installations.

The costs of these investment objectives, their finalizing terms, and the financing sources are synthetically presented into Table no. 1.

*Table no. 1- The investment objectives of the Project, the costs, the financing sources and the finalizing terms*  
[...]<sup>9</sup>

### 2.3.3. Benefits of the Investment

- (27) The direct effects that the achievement of this investment program will have are the following:
- increasing the quantity of energy produced and delivered within the system, and, implicitly, the possibility to offer a higher quantity of energy for the system services, in the perspective of the creation of regional system market;
  - bringing the operating production capacities at the world level of energy-economic performances specific for the power stations, and increasing the functioning safety;

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<sup>4</sup> Confidential data

<sup>5</sup> Confidential data

<sup>6</sup> Confidential data

<sup>7</sup> Confidential data

<sup>8</sup> Confidential data

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- reducing the negative impact on the environment, as the equipment to be purchased are made and exploited accordingly to regulations aligned to the “acquis communautaire”;
- reducing overhaul expenses, due to the reliability of the equipment to be purchased;
- reducing the specific consumptions, and, implicitly, costs diminishing;
- increasing labor productivity;
- increasing the automatization degree of the power station

## **2.4. Details of state measure**

- (28) The financial support intended to be granted to SC HIDROELECTRICA SA resides in the sovereign guarantee for an external loan amounting Euros 66 million, which is going to be contracted from the IBRD. The loan is used for co-financing the Project (the Project is presented at subchapter 2.3.)
- (29) Legal basis for granting the financial support consists of the following normative acts:
- Public Debt Law, no. 313/2004;
  - GD no. 1633/2004 concerning the approval of the technical-economic indicators of the investment objective “Modernization of the equipment at the Power Station Lotru-Ciunget”, Valcea County.
- (30) The draft of the agreement between IBRD and SC HIDROELECTRICA SA establishes the following financing terms:
- value of the loan: Euros 66 M;
  - State guarantee: 100%;
  - triggering period: until 30.06.2010;
  - interest rate: Libor (6M) + 0,5;
  - grace period: 2005-2010;
  - reimbursement period: half-yearly installments for the period 2010-2021.

## **3. National and regional importance of the Project**

- (31) This project is included in the list of those projects contained by the “Understanding Memorandum concerning the regional market of energy and the integration into the energy internal market of the European Community”, signed in Athens, on December 2003. The Memorandum establishes general rules and objectives to be fulfilled in order to put the basis for a regional integrated market in the South-Eastern Europe, and to ensure its progressive integration into the EU Energy Internal Market. The analyzed project has been selected by the IBRD, from several regional projects presented by South-Eastern Europe countries, due to its special significance in the context of the energetic sector reform.
- (32) The integration of the National Energetic System (“NES”) in the United European System (“UCTE”) implies the ensuring of several system services under very rigorous contractual terms (which impose certain qualitative and quantitative standards), because any failure in their supplying could lead to the necessity of UCTE’s intervention. In order to observe these terms, the sole viable alternative could be the

entire modernization of the power station equipment, as this power station ensures 60% of the Romania's system services.

- (33) The Project is part of the Romania's National Energetic Development Strategy, on medium term, and it is considered an investment priority objective within the Romania's Sustainable Development Strategy. Taking into account its scope, the longevity of the investment objectives exploiting – about 30 years – as well as the major role of the Power Station Lotru-Ciunget within the NES, the Romanian State has decided to support the Project by granting a sovereign guarantee for the loan contracted from IBRD.
- (34) The national importance of the Project achievement consists in the necessity for the Power Station Lotru-Ciunget to cover the variable areas of the charge curve, and participate at the adjustment of the power and of the frequency within the NES, as well as of the necessity to increase its capacity of rapid intervention in cases of maximum emergency (the power station can enter into operation, at maximum power, in 4-5 minutes).
- (35) By means of the support granted for the achievement of this investment project, the Romanian State aims to promote an optimal solution for covering the increasing demand of electricity, taking into consideration the limited resources of fossil fuels for the production of conventional electricity. The Competition Council emphasizes that the investment project is all the more important as the company produces and supplies electricity, a vital product both for the economy and for the current people life, and any breakdown in electricity supplying could have a major negative impact both at economic and the social level.
- (36) The modernization of the Lotru-Ciunget Power Station contributes, indirectly, to the economic development of all Romania's regions, as the electricity produced by it is dispatched within the national system, and supplied to the whole country's territory. The national economy passes by a process of automatization both of the industrial activities and of the domestic ones; as the automatization degree became an indicator for the society' development level, the available electricity is a decisive factor which influences the sustainable development of any region.
- (37) The investment Project does not aim, by itself, to create new jobs, but, through its implementation, the existing employees' number 187 persons will be maintained, within the power station, and, implicitly, within the region. At the same time, it's estimated that, by setting-up branches of contractors and sub-contractors brought during the period of investment achievement, about 50 new jobs will be created. It is to be mentioned that, within the South-West Oltenia Development Region, the unemployment rate is of 8.3%, with 2% higher than the national one, and that at least one member of each family from the Lotru-Ciunget area is the power station' employee.
- (38) The State aid grantor emphasizes the benefic environmental effect of this Project implementation, because – as known – the hydro energy is the most pure electricity, its production having minor damage consequences on the environment. Besides, by purchasing new modern equipment and installations, the goal is both to reduce

negative environmental effects, and to harmonize with the European environmental standards.

#### **4. STATE AID ASSESSMENT**

##### **4.1 The State aid character of the support measure, in the meaning of the Law no. 143/1999 on State aid, with subsequent amendments and completions**

- (39) In order to evaluate if State aid rules are applicable, the Competition Council has to analyze if the financial support measure constitutes a State aid under Law no. 143/1999 on State aid, with subsequent amendments and completions.
- (40) As the governmental guarantee intended to be granted to SC HIDROELECTRICA SA involves State resources, is granted on a selective basis, and could give to the company an economic advantage, thus creating the pre-requisites for the distorting competition and trade between Romania and Member States, it can be considered state aid, under the Law.

##### **4.2. Compatibility of state aid measure: analysis of the financial support measure, through the provisions of *Guidelines on state aid granted under the form of guarantees***

- (41) As the financial support measure is a guarantee, for establishing its state aid character, it has to be analyzed under the *Guidelines on state aid granted under the form of guarantees*.
- (42) According to point 4.2 of the *Guidelines on state aid granted under the form of guarantees*, an individual State guarantee does not constitute State aid if the following conditions are cumulatively met:
- a. the borrower is not in financial difficulty;
  - b. the borrower is, in principle, able to contract a loan under market conditions, from financial markets, without any State intervention;
  - c. the guarantee is granted related to a certain financial operation, it refers to a certain established maximum amount, does not cover more than 80% from the loan to be reimbursed, or from another financial obligation, except for bonds and other similar instruments, and is not unlimited in time;
  - d. the guarantee implies the payment of a risk premium at the market price.
- (43) Analyzing the economical-financial situation of SC HIDROELECTRICA SA, it can be concluded that the company is not in difficulty. According to information provided in the notification form, the company is able to contract loans under market conditions, without State intervention. Thus, the Competition Council considers that conditions stipulated at point 4.2. a) and b) of *Guidelines on state aid granted under the form of guarantees*, are fulfilled.
- (44) However, in the case when the guarantee covers more than 80% of the loan, the Competition Council notes that the condition stipulated at point 4.2. c) of *Guidelines on state aid granted under the form of guarantees*, is not fulfilled. This is not the case



here consequently it is considered that the guarantee which SC HIDROELECTRICA will benefit of constitutes a state aid<sup>10</sup>.

- (45) According to point 3.2. a) from the *Guidelines on state aid granted under the form of guarantees*, the State aid under the form of guarantees can be calculated “in same way as net grant-equivalent of a loan granted under preferential conditions, the interest bonus representing the difference between the market interest rate and the interest rate obtained due to State guarantee, after any paid premium have been deducted”.
- (46) The State aid grantor has presented, as annex to the notification form, an offer received by SC HIDROELECTRICA SA from the Romanian Commercial Bank, by which the bank has been willing to grant a similar loan, under market conditions, with an interest rate of 6.75 %; as a result, in order to establish the State aid under the guarantee form, the Competition Council considered as reference rate the level proposed by the Romanian Commercial Bank.
- (47) Under these conditions, the State aid under the form of sovereign guarantee was calculated as the grant-equivalent<sup>11</sup> of the loan contracted from IBRD (amounting Euros 66 million), State guaranteed, namely Euros 18.787M, the equivalent of ROL 673,023 M<sup>12</sup>.
- (48) Point 1.1. in the Guidelines on the state aid under the form of guarantees stipulates that usually the beneficiary of a 100% guarantee is the borrower because it enables the latter – as has been demonstrated above – to obtain a loan it would not have obtained in the absence of such a guarantee.
- (49) According to point 2.2. of the *Guidelines on the state aid granted under the form of guarantees*, in certain circumstances also the lender will benefit from the guarantee granted by the State, for example this may be the case where the guarantee is given ex-post related to a loan, in this case the guarantee can be a state aid for the lender.
- (50) The guarantee granted by the Ministry of Public Finance to the company, for the contracted loan, represents an ex-ante condition for entering into force of this loan. The guarantee will be issued before making any drawing or using any amount of this loan, and it has not been granted for an existing loan before the State had issued this guarantee.
- (51) In this case, taking into account that IBRD is the lender (which is a non-commercial financial institution and only accepts 100% state guarantee) it is considered that there is no state aid granted by Romanian State to the IBRD.

#### **4.3. Assessment of the state aid compatibility with the normal competitive environment**

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<sup>10</sup> The Competition Council notes that the fulfillment of the fourth condition mentioned at letter d) couldn't be assessed, as according to the information enclosed in the notification the risk premium shall be established by the Ministry of Public Finance at the time when the guarantee letter will be signed (guarantee letter is to be issued after the Competition Council's Decision and the closing of the Loan Agreement).

<sup>11</sup> The subsidy's equivalent was calculated according to Annex. 2 point 3 in the Regulation on the regional state aid, considering the terms of the loan, the reimbursement schedule as well as the discount rate of 2% for the Euro during 2005-2022.

<sup>12</sup> In the calculation was used BNR's exchange course from 15.06.2005: 1 Euro = ROL 36,143.

#### **4.3.1. General considerations**

- (52) Since the State aid is granted to finance an investment project to be carried out during 2005-2010, the Competition Council assessed this State aid in accordance with provisions of the *Regulation on regional State aid* (hereinafter the Regulation). The Competition Council notices that, although the necessity and opportunity of this project lies in its importance at national level, its contribution to regional development is subsistent due to the benefic effects generated at national level and automatically propagated at regional level. The sector where SC HIDROELECTRICA SA activates is not covered by specific rules.
- (53) As mentioned under para. (5) of this Decision, SC HIDROELECTRICA SA is not a firm in difficulty, thus being eligible to receive regional State aid under art. 1(4) of the Regulation.
- (54) The Lotru-Ciunget power station is situated within the development region named South-West Oltenia. All Romania's territory fulfills the conditions for being considered as assisted area under Art. 87(3)(a) of EC Treaty, and the maximum intensity allowed by the Regional Map is of 50% for large companies.

#### **4.3.2. Analysis of the State aid compatibility according to the rules for regional State aid for investment**

- (55) The guarantee to be granted to SC HIDROELECTRICA SA is not part of a regional scheme prior authorized by the Competition Council. Thus, it is considered as ad-hoc aid that should be assessed through its effects. The ad-hoc character of the aid results from the fact that the Romanian authorities do not have enough financial resources to implement a regional scheme for investments, in which the analyzed project could be included. At present, in Romania there is no regional scheme for investments aiming at modernization of energetic infrastructure by large companies.
- (56) Further on, the Competition Council assesses the way the criteria provided by the Regulation are fulfilled, respectively:
- the concept of initial investment;
  - the eligible costs;
  - the beneficiary's contribution to the Project financing;
  - the regional State aid intensity;
  - maintenance of the investment;
  - cumulation rule.

##### **4.3.2.1. Initial investment**

- (57) According to Art. 5 (1) of the Regulation, initial investment means an investment in tangible asset, related to the setting-up of a new establishment, the extension of an existing establishment, or the starting-up of an activity involving a fundamental

change in the product or the production process of an existing establishment, through rationalization, diversification or modernization.

- (58) In the present case, the investments will start after the Competition Council issues a decision in this respect. The project will be achieved in the period November 2005 – November 2010.
- (59) The State aid is destined to investment in tangible assets aiming at modernization of groups forming the Lotru-Ciunget power station in order to rationalize and improve the efficiency the electricity production process. The investments aim to turn the Lotru-Ciunget power station into a reliable objective, able to produce electricity in quantities enough to ensure the necessary services of the national system.
- (60) Art. 5 (2) of the Regulation stipulates that, from the category of initial investment, it has to be excluded the replacing investment aimed to maintain the production potential, which bring no income increase, and those aimed to the financial restructuring of a company in difficulty.
- (61) As result of the investment Project achievement, the following evolution of the main technical-economic indicators is estimated:

*Table no. 2: Evolution of the technical-economic indicators of the investment*

| Indicator denomination                              | Before Project achievement | After Project implementation |
|-----------------------------------------------------|----------------------------|------------------------------|
| Availability <sup>13</sup>                          | 70%                        | 95%                          |
| Reliability <sup>14</sup>                           | 90%                        | 95%                          |
| Average charging factor <sup>15</sup>               | 45.3%                      | 60%                          |
| Energy output                                       | 700 GWh/year               | 900 GWh/year                 |
| Incomes obtained from the system services supplying | Euros 18 million/year      | Euros 23 million/year        |
| Exploitation costs                                  | Euros 2.7 million/year     | Euros 2 million/year         |

*Source: The Feasibility Study of the Project and supplementary information*

As it can be seen, after implementing the investment project, an improvement of all technical-economic indicators will be registered. Besides, the efficiency of the modernized power station will increase, reaching 92.5%, and the own electricity consumption will be reduced with 1016 GKWh/year.

(62) [...] <sup>16</sup>

- (63) Given the mentioned issues from par. (61) and (62), it might be concluded that, through the investment project which is going to be achieved, a surplus value is obtained; thus, the provisions of Art. 5 of the Regulation, regarding the initial investment, are observed.

<sup>13</sup> Availability represents the difference between the number of functioning hours and the number of hours for planned and un-planned overhauling, as reported to the number of functioning hours.

<sup>14</sup> The reliability represents the difference between the number of functioning hours and the number of hours for planned and un-planned overhauling, as reported to the difference between the number of functioning hours and the number of hours for planned overhauling

<sup>15</sup> The average charging factor represents the rate between the average power and the nominal one for each group.

<sup>16</sup> Confidential data

#### **4.3.2.2. Eligible costs**

(64) Pursuant Art. 6(1) of the Regulation, the state aid for the initial investment is calculated as percentage points of the investment' value. According to para. (2) of the same article, this value is established on the basis of a uniform set of items of expenditures, corresponding to the elements of investment, namely lands, buildings and equipment which represents the standard base defined in the Annex 2 of the Regulation.

(65) [...] <sup>17</sup>.

(66) The art. 6 (3) of the Regulation stipulates that, in case of a purchase, only the costs of buying the three assets elements from the standard base should be taken into account, provided that the transaction is taking place under market conditions. In case of the analyzed project, all equipment and installations which constitute the standard base will be purchased within an open international public procurement procedure. The purchasing procedure has already been initiated, the IBRD has already selected the offers of the following companies: Alstom, Iberdrola, General Electric and Voith Siemens.

#### **4.3.2.3. Beneficiary's contribution**

(67) Art. 8 of the Regulation stipulates that, in order to ensure a viable and sound level of the initial investment benefiting from state aid, the beneficiary's contribution to its financing must be of at least 25%, and this contribution must not contain any aid.

(68) [...] <sup>18</sup>.

(69) The Competition Council concludes that the provision from art. 8 of the Regulation is observed, because the beneficiary's contribution to the Project exceeds the minimum ceiling of 25%.

#### **4.3.2.4. The state aid intensity**

(70) Pursuant art. 9 of the Regulation, the gross intensity of regional aid must not exceed the rate of 50% net grant equivalent provided for in Annex 2.

(71) [...] <sup>19</sup>.

(72) As a result, the Competition Council finds that the maximum intensity stipulated by the Regulation is observed.

#### **4.3.2.5. Maintenance of the investment**

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<sup>17</sup> Confidential data

<sup>18</sup> Confidential data

<sup>19</sup> Confidential data

- (73) Pursuant art. 11 of the Regulation, the aid for the initial investment must be made conditional, through its method of granting or by conditions related to its acquisition, on the maintenance of the investment in question for a minimum period of five years.
- (74) The investment achieved by SC HIDROELECTRICA SA within the Project will be maintained, according to the supplementary information provided as completion of the notification form, for a period of 30 years; thus, the Regulation' condition concerning the investment maintenance is fulfilled.

#### **4.3.2.6. The cumulation rule**

- (75) The aid intensity ceilings laid down in Article 9 and Article 10 apply to the total aid where for assistance is granted concurrently under several regional schemes regardless of whether the aid comes from local, regional, national or Community sources.
- (76) The state aid grantor, together with the ministry having under its coordination the company concerned, will monitor the activity of SC HIDROELECTRICA SA, ensuring that the state aid referred to in this Decision, cumulated with state aids granted for the same objective within future schemes, not to exceed the maximum allowed intensity of 50%, stipulated by the Regulation.
- (77) Until now, SC HIDROELECTRICA SA did not benefit from state aid based upon regional development schemes. Thus, the rule regarding the state aid cumulating is observed.

### **5. CONCLUSIONS**

- (78) The information presented in the notification submitted to the Competition Council lead to the conclusion that the state aid which is to be granted for SC HIDROELECTRICA SA is not capable of significantly affecting a normal competitive environment and does not infringe the appropriate application of the international treaties Romania is a part of.
- (79) After the analysis carried out, the Competition Council concludes that the state aid in value of Euro 18,787,125.04, the equivalent of ROL 673,023 M, fulfils the authorization criteria, pursuant the Regulation on regional state aid.

### **DECIDES**

**Art. 1.** The measure notified by the Ministry of Public Finance, having as beneficiary the SC HIDROELECTRICA SA, constitutes state aid in the meaning of Law no. 143/199 on state aid, with subsequent amendments and completions.

**Art. 2.** Based on Art. 12(2)b), corroborated with Art. 14(1)f) of Law no. 143/1999, with subsequent amendments and completions, it is authorized the regional state aid for investment which is intended to be granted for S.C. HIDROELECTRICA SA.

**Art. 3.** The state aid value, established according to the *Guidelines on state aid granted under the form of guarantees*, is of Euro 18,787,125.04, the equivalent of ROL 673,023 M.

**Art. 4.** This Decision is applicable as of its date of communication.

**Art. 5.** Pursuant provisions of Art. 29 of Law no. 143/1999 on state aid, with subsequent amendments and completions, this Decision may be appealed by interested persons before the Bucharest Court of Appeals, the Administrative Contentious Section, within 30 days from its communication.

**Art. 6.** This Decision shall be communicated by the General Secretariat within the Competition Council, to:

- Ministry of Public Finance, Apolodor Street, no. 17, sect. 5, Bucharest
- SC HIDROELECTRICA SA, Constantin Nacu Street, no. 3, sect. 2, Bucharest.

**Art. 7.** The General Secretariat and the Directorate for State Aid Authorization within the Competition Council shall pursue the fulfillment of the present Decision.

PRESIDENT  
MIHAI BERINDE