

DECISION OF COMPETITION COUNCIL
no.156 on 22.08.2005
regarding the State aid notified by Local Counsel of Cervanoda
to be granted to
S.C. DETACAN S.A. Cernavoda

COMPETITION COUNCIL,

Based on the provisions of the Decree no. 57/2004 for the appointment of the Competition Council members,

Based on the provisions of Competition Law no. 21/1996, published in Official Journal of Romania, Part I, no. 88 on 30 April 1996, with the subsequent modification and completions,

Based on the provisions of Law no. 143/1999 on state aid published in the Official Journal of Romania, Part I, no. 370 on 3rd August 1999, with the subsequent modification and completions,

Taking into account the provisions of European Agreement establishing an association between Romania, on one side, and European Communities and the Member States of those, on the other side, approved by Law no. 20/1993, published in Official Journal of Romania, Part I, no. 73 on 12 April 1993;

Taking into account the provisions of the Regulation on State aid in the form of compensation granted to certain undertakings entrusted with services of general economic interest,

On the following grounds,

1. PROCEDURE

(1) By the note no. 3009/17.06.2005, registered at the Competition Council with the no. RS-AS 20/01.06.2005, Local Counsel of Cernavoda notified to the Competition Council under Art. 6 of *Law 143/1999 on state aid, with subsequent amendments and completions*, the financial support for the S.C. DETACAN S.A. Cernavoda.

(2) Since the data presented in the submitted notification was not complete, supplementary information was requested by the note addressed under no. CC 1352/07.07.2005. The notification became affective on the date the information were complete, namely on 19.07.2005.

2. DESCRIPTION OF THE FINANCIAL SUPPORT MEASURE

2.1. Legal basis for granting the State aid

The legal basis for granting the State aid is:

a) *GEO no. 37/2004 on measures to reduce the arrears in the economy;*

b) GD no. 1000/2004 on measures to develop and conclude the privatization and amending and completing Privatization Strategy for electric energy distributors – branches of “ELECTRICA DOBROGEA” S.A. and “ELECTRICA BANAT” S.A.;

c) Law no. 570/2004 on certain measures for privatization of electric energy distributors/suppliers – branches of “ELECTRICA DOBROGEA” S.A. and “ELECTRICA BANAT” S.A, as well as certain measures regulating the activities of electric energy distributors.

2.2. The beneficiary of state support measure

(4) The beneficiary of the notified support measure is S.C. DETACAN S.A. Cernavoda.

(5) The registered capital of S.C. DETACAN S.A. Cernavoda is ROL 604,135,000. S.C. DETACAN S.A. CERNAVODA is entrusted with the public service of captation, treatment and distribution of water as main activity, according to the Local Counsel of Cernavoda Decision no.9 of 16.03.1995. The only shareholder is the Local Counsel of Cernavoda.

(6) S.C. DETACAN S.A. Cernavoda is situated in Cernavoda, no.2A Viorelelor Street and is registered at Commerce Register with no.J13/1072/1995 under the unique registration code R 2421774.

(7) Beside the main services listed above, S.C. DETACAN S.A. CERNAVODA also has secondary activities: sewerage of used water, undertaking, transportation and distribution of thermal power.

(8) The company has 31 km adduction piping with a diameter of 2x600 mm, a water treating plant with a capacity of 230 l/s, and a supplementary treating line or 150 l/s. The company also owns laboratories for water analysis and 5 water treating tanks: 2x2800m³ and 3x1000 m³.

2.3. The market affected by the financial support granted to the company

(9) The market affected by the granting of financial support assessed in the present decision is the market of the public service of water captation, treating, and distribution services. These services represent 60% from S.C. DETACAN S.A. CERNAVODA's total activity and the financial support measures granted by the State and notified by Local Counsel of Cernavoda aim to insure the performance of the public service of water captation, treating, and distribution.

(10) S.C. DETACAN S.A. Cernavoda is the sole water supplier in the area of Cernavoda city and Stefan cel Mare village, Constanta County.

(11) The economical and financial results based on the profit and loss accounts for 2002-2004 are listed in Table 1.

Indices	ROL thousands		
	2002	2003	2004
Total turnover	24,538,000	27,727,000	35,801,000
Total turnover on Romanian market	24,538,000	27,727,000	35,801,000
Profit/loss	- 3,617,000	- 9,043,000	- 9,785,000

It may be seen that although the turnover rises every year, the company suffers increasing losses.

2.4. Ways of granting the financial support

(12) The financial support measure notified by Local Counsel of Cernavoda represents the remittance of the interests, delay increments, and penalties in amount of ROL **7,076,198,090** owed by de S.C. DETACAN S.A. Cernavoda towards S.C. FDFEE ELECTRICA DOBROGEA S.A. Constanta. The granting of this financial support notified by Local Counsel of Cernavoda is regulated by EGO NO. 37/2004 measures for decreasing the budgetary arrears.

(13) According to the received data, S. C. DETACAN S.A. CERNAVODA did not benefit of any state aid measures in the last three years.

2.5 Costs arising from the operation of the service of general economic interest

(14) The public service of water captation, treatment, and distribution is regulated by ANRSC. In order to perform this service, the company incurs raw materials and fuels cost, personnel costs, environmental costs, repairing costs, and maintenance and investments costs, etc.

(15) In the company's costs/incomes budget, as well as in the funding note for the price, the incomes and costs related to the exploiting activity are presented separately. The public service of water captation, treatment, and distribution entrusted to the company is thereby distinct of all the others activities undertaken by S.C. DETACAN S.A. CERNAVODA.

Table no.2: Main economic and financial indicators of S.C. DETACAN S.A. Cernavoda related to the discharge of the public service for 2002-2004

Requirements	2002	2003	ROL thousands 2004
Revenues from water captation, treatment and distribution service	13,418,000	12,526,000	17,295,000
Expenses for water captation, treatment and distribution service	15,345,000	18,047,000	23,352,000
Financial result from water captation, treatment and distribution service	-1,927,000	-5,521,000	-6,057,000
Revenues from other activities	11,698,000	15,201,000	19,372,000
Expenses for other activities	13,388,000	18,724,000	23,100,000
Financial result from other activities	-1,690,000	-3,523,000	-3,728,000

(16) The local water delivery prices, as well as the actual costs of water captation, treatment, and delivery are listed in Annex, Table 3.

(17) From the data presented above it can be seen that S.C.DETACAN S.A. Cernavodă attains every year of the analyzed period certain exploiting costs related to the service of water captation, treatment and distribution, costs which are higher than the delivery prices established by ANRSC, for both the population and undertakings.

(18) The negative differences between the local water delivery prices and the actual operating costs are listed in the table below:

Table no. 4 –Evolution of the losses incurred by the company in 2002 – May 2005 as a result of the difference between the local delivery price and the real cost

Period	The difference between the ANRSC price and the actual cost (ROL)	Delivered quantity (m ³)	Losses caused by non-covering of the costs (ROL)
TOTAL 2002	-832	2,886,892	-2,401,894,144
TOTAL 2003	-2,948	2,296,168	-6,636,443,264
TOTAL 2004	-4,008	2,311,216	-9,263,353,728
TOTAL 31 MAY 2005	-862	1,012,042	-872,380,204
OVERALL TOTAL		8,506,318	-19,174,071,340

Source: *notification form S.C. DETACAN S.A.*

(19) From the data presented in Table 4 result losses in amount of ROL **19,174,071,340** for SC. DETACAN S.A. in January 2002-May 2005, due to the difference between the local delivery price established by ANRSC and the actual production and delivery cost.

(20) Among the causes which determined the company's losses are the followings:

- the social politics of low prices maintenance for social protection of the population impoverished by the unemployment situation;
- high electric power consumption pumps for the captation of water from Danube;
- the high electric power need of the water treatment process, due to an effective power under 50% of the very old pumps used;
- high consumption of substances for water treatment process, due to the equipment high degree of wear and to the effective power under 50% of the pumps;
- as a result of the distribution piping ageing, the water losses are high, over 30 % of the delivered quantity (the piping is older than 30 years);
- the absence of fitted laboratories so the water tests would be performed by the company; in the present, the tests are done in other cities by authorized laboratories at high costs;
- the unit price of cubic meter of water is periodically established under the calculation methods imposed by ANRSC Bucharest.

3. ANALYSIS OF THE STATE MEASURE OF SUPPORT

3.1. Object of the decision

(21) On the basis of the notification to the Competition Council by Local Counsel of Cernavoda, the object of the present decision refers to the remittal of the interests, delay increments, and penalties in amount of ROL **7,076,198,090** owed by de S.C. DETACAN S.A. Cernavoda towards S.C. FDFEE ELECTRICA DOBROGEA S.A. Constanta.

3.2. Obligation of service of general economic interest

(22) The financial support granted to a company entrusted with a service of general economic interest is not considered state aid for the purposes of art. 2 of Law 143/1999 on state aid with subsequent amendments and completions, if the following conditions are cumulatively met:

- a) the obligation to discharge a service of general economic interest is entrusted through a government/administrative act and is clearly defined;
- b) the parameters based on which the compensation is calculated must be established in advance, in an objective and transparent way, in order to avoid granting an economic advantage to the beneficiary;
- c) the compensation must not exceed the amount necessary to totally or partially cover the costs incurred through the service of general economic interest, taking in consideration the relevant incomes and a reasonable profit in performing these obligations;
- d) if the undertaking entrusted with the service of general economic interest was not selected through open public tender which would have allowed the selection of an bidder able to discharge this public service at the lowest costs, then the level of compensation must be set based on a comparative analysis of the company's costs and the costs of well-managed and profitable enterprise which meets all the conditions set for the performance of the particular public service, given the relevant incomes and a reasonable profit from the meeting of the service of general economic interest obligations.

3.3. The condition from par. 3.2. a):

(23) S.C. DETACAN S.A. CERNAVODA is entrusted with the public service of captation, treatment and distribution of water as main activity, according to the Local Counsel of Cernavoda Decision no.9 of 16.03.1995.

(24) According to the law of the public management no.326/2001, the supply with captation, treating and delivering water represents a public service, with the fulfillment of some essential conditions:

- a) continuity both in quality and quantity, according to the conditions stipulated in the contract;
- b) adaptability to consumers' requests;
- c) equal access to the public service, in the conditions stipulated in the contract;
- d) ensuring the public health and life quality.

(25) Organization, operation and functioning of public services must ensure:

- a) meeting the quantity and quality demands of users, according to the contract provisions;
- b) the optimal operation in safety, profitability and economic efficiency conditions of buildings, equipments, installations and all assets, according to the projected technological parameters and in compliance with the requested conditions, operation guidelines and organization and functioning regulations;
- c) protecting the public estate and environment by observing the legal provisions;
- d) informing and consultation the citizens with the purpose of protecting the health of the population benefiting from these services.

(26) The obligations of the operators which are suppliers/providers of public services towards the consumer are mainly the following:

- a) to serve all users in the area for which they were authorized/certified;
- b) to comply with all the performance parameters settled by the local public authorities and the national regulatory authority, respectively A.N.R.S.C. and A.N.R.E;
- c) to supply the information requested by the local public administration and the national regulatory authority and to enable the access to the documentation of the respective utilities, according to the conditions of the operating contract.

(27) In addition to the above mentioned, we underline the fact that S.C. DETACAN S.A CERNAVODA is bound to assure the actual functioning of the water captation, treatment and distribution service. Moreover, the company has to perform these services at regulated prices considering the population affordability level. As a consequence, it can be concluded that S.C. DETACAN S.A. CERNAVODA is entrusted a service of general economic interest, according to the Local Counsel of Cernavoda Decision mentioned above.

3.4. Condition from point 3.2. b):

(28) According to this criterion the compensation of the public service obligation must be calculated on pre-established objective and transparent parameters and may not grant an economic advantage to the beneficiary.

(29) The market of water captation, treatment and distribution is a regulated market. According to the *G.O. no. 32/2002 on organization and functioning of water supplying and sewerage services* the assessment, adjusting and modification of prices and tariffs for water supply public service is subject to A.N.S.C.R. recommendation regardless of the organization or property form of the undertakings entrusted with these services. The level of prices and tariffs advised by A.N.R.S.C. is compulsory and is established on the basis of the users affordability level.

(30) The establishment of drinking water/sewerage prices is made in advance, based on the following elements submitted to ANRSC:

I. Expenses in previous period:

1. physical expenditure:

- raw water;
- technological losses;
- electric power;
- technologic materials;
- annual amortisation/depreciation;
- overhead repairs;
- external repairs;
- studies and researches;
- collaborations;
- commissions and fees;
- protocol, advertising;
- post and telecommunications ;
- water quality expenses;

2. personnel expenses (salaries, Health Insurances, unemployment taxes, Social Insurances);

3. financial expenses (interests, commissions, etc.).

II. Previous period revenues from captation, treatment and distribution of water;

- III. Previous period result;
- IV. Development quota;
- V. Delivered amount of drinking water, including own consuming;
- VI. Unit price/tariff for previous period.

(31) Before every financial year, S.C. DETACAN S.A. ascertains its own costs/incomes budget which is subject to Local Counsel analysis and approval. In this budget, the expenses and the revenues of exploitation activity are distinct, as well as the investment projects planned for that year.

3.5. Condition in 3.2. c)

(32) By performing the water captation, treatment and distribution service, as well as the sewerage service, the company registers annual costs higher than the delivery prices established by ANRSC.

(33) From the data presented in Table 4 it can be seen that during the period from January 2002 to 31 May 2005, the company registers losses in amount of ROL **19,174,071,340**, occurred from the public service of water captation, treatment and delivery, and from sewerage service. Under these circumstances, the state aid in amount of ROL **7,076,198,090** covers only to some extent the losses of S.C. DETACAN S.A induced by performing the entrusted service of general economic interest.

(34) The state aid granted to the company therefore represents a partially balancing of the costs generated by the execution of the general economic interest service of water captation, treatment and delivery in the city of Cernavoda for the period 2002-May 2005.

3.6. Condition in 3.2. d)

(35) Entrusting of public interest service to S.C.DETACAN S.A CERNAVODA, for water captation, treatment and delivery, was not done by public auction.

(36) The public service of captation, treating and delivering water was assigned to S.C. DETACAN S.A. Cernavoda by Local Counsel of Cernavoda Decision no. 9/16.03.1995. Therefore, in order to establish the compensation level, it is necessary to analyze the costs that another well-run undertaking would have had, in providing the same service. The state aid provisioner failed to make such a comparison.

(37) As the four conditions under point 22 are not met cumulatively, namely the condition under par 22. (d) was not proved, the support measures for S.C. DETACAN S.A. CERNAVODA, notified by the Local Counsel of Cernavoda constitute state aid for the purposes of art. 2 of *Law no. 143/1999 on State aid, with subsequent modifications and completions*, and of the *Regulation on State aid in the form of compensations granted to certain undertakings entrusted with services of general economic interest*.

(38) The compensations granted for discharging of the general economic interest service constitute state aid compatible with a normal competition environment if the following conditions are cumulatively met:

- a) the state aid is necessary for discharging a service of general economic interest;
- b) the state aid does not unduly affect the trade between Romania and the EU Member States.

3.7. State aid necessity

(39) The state aid granted to S.C.DETACAN S.A. CERNAVODA is strictly necessary for appropriate and continuously operating the public service of captation, treating and delivering water. Where a regulated market exists, the company cannot ask for a price higher than the one necessary to cover the exploiting costs, including a reasonable profit.

(40) This is the main reason for which the company is registering losses every year, and cannot pay its obligations towards the budget and the suppliers. We can add to this the low rate of collecting the claims from the population.

(41) The foreclosure procedure of these obligations would block the company's activity and will lead to the cease of the public service operation with severe consequences for the population and undertakings of the city of Cernavoda and Stefan cel Mare village.

3.8. No unduly affect the trade between Romania and the EU Member States

(42) The geographical market affected by the state aid is the city of Cernavoda and Stefan cel Mare village. Therefore, being a local market, by granting a state aid there will be no unduly distortion on the trade between Romania and the EU Member States, given the fact that the company is not involved in any export activities.

3.9. There is no over-compensation

(43) The state aid granted in the form of exemptions from the payment of penalties owed towards S.C.D.F.E.E. ELECTRICA DOBROGEA S.A. do not represent an over-compensation because it does not exceed the costs which are absolutely necessary in order to perform the service of general economic interest.

(44) Thus, the two conditions mentioned at par. (38), conditions provided in the *Regulation on state aid in the form of compensations granted to certain undertakings entrusted with services of general economic interest* are cumulatively met, so we can appreciate that the support measures for S.C. DETACAN S.A. Cernavoda, representing compensations for performing the service of general economic interest, are state aid compatible with the normal competitive environment.

(45) The total amount of state aid granted to S.C. DETACAN S.A. Cernavoda is of ROL **7,076,198,090** representing the state aid notified by Local Counsel of Cernavoda.

DECIDES

Art. 1. The analyzed measures of financial support granted to S.C. DETACAN S.A. Cernavoda constitute state aid for the purposes of Art. 2 of *Law 143/1999 on State aid modified and completed by Law 603/2003 and GO 94/2004 on regulation of financial measures*.

Art. 2. The notified state aid ROL **7,076,198,090** represents a necessary compensation to achieve, under normal conditions of safety and continuity the service of general economic interest for

captation, treating and delivering water, and this compensation does not unduly affect the trade between Romania and the EU Member States.

Art. 3. Pursuant to Art. 12 art. 2 (b) read in conjunction with Art. 14 par. 1 (j) of *Law 143/1999 regarding state aid with subsequent modifications and completions*, we authorize the state aid for S.C. DETACAN S.A. Cernavoda as aid to achieve under conditions of safety and continuity the service of general economic interest.

Art. 4 Pursuant to Art. 24 of *Law 143/1999 on state aid with subsequent modifications and completions*, suppliers shall annually convey to the Competition Council information regarding the state aid granted to S.C. DETACAN S.A. Cernavoda in view of monitoring the aid.

Art. 5 This decision is applicable as of its date of communication.

Art. Pursuant to Art. 20 of *Law 143/1999 on state aid with subsequent modifications and completions*, this decision may be appealed by the interested persons before the Bucharest Court of Appeal, the administrative section, within 30 days from its communication.

Art. 7 This Decision shall be communicated by the General Secretariat of the Competition Council to:

- Local Counsel of Cernavoda – No.1 of Ovidiu Street, Cernavoda, Constanta County;
- S.C. DETACAN S.A. Cernavoda - no.2A Viorelelor Street, Cernavoda, Constanta County.

Art. 8 The Secretariat-General and the Directorate for State Aid Authorization of the Competition Council shall pursue the fulfillment of the present Decision.