

Decision of the Competition Council

No. 157/22.08.2005

**concerning the notification regarding the financial support to be granted to S.C. AQUA
TERMO & SERVICE S.A. Fetesti, Ialomita District**

Competition Council,

Having regard the Decree No.57/2004 on the appointment of the Competition Council members,

Having regard the provisions of the Competition Law no.21/1996, published in Official Journal, Part. I, no. 88/April 30/1996, amended and completed by Emergency Government Ordinance no.121/2003 approved by the Law no. 184/2004 and Law no. 538/25.11.2004,

Based on the provisions of the Law no. 43/1999 on State aid published in the Official Journal of Romania, Part. I, no.370 on 3rd of August 1999, amended and completed by the Law no. 603/2003 and by Government Ordinance no. 94/2004 on some financial measures,

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

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

On the followings grounds,

1. PROCEDURE

(1) By address no.3009/17.06.2005, registered at the Competition Council with no. RS-AS/41/20.06.2005, S.C. FDEE ELECTRICA DOBROGEA S.A. notified to the Competition Council under Art. 6 of the Law no. 143/1999 on State aid, with subsequent amendments and completions, the financial support for S.C. AQUA TERMO & SERVICE S.A. Fetesti, Ialomita District, which is under authority of the Local Council of Fetesti.

(2) Since the data presented in the submitted notification was not complete, supplementary information was requested by addresses no. DAAS 615/22.06.2005 and 828/25.07.2005. The notification became affective on the date the information were complete, namely on 02.08.2005.

2. DESCRIPTION OF THE FINANCIAL MEASURES

2.1 Legal basis for granting the financial support

(3) The legal basis for granting the financial support is represented by *Emergency Government Ordinance no. 37/2004 regarding certain measures for reducing the arrears in the economy.*

2.2. The beneficiary of the financial support measure

(4) The beneficiary of the notified support measure is S.C. AQUA TERMO & SERVICE S.A. Fetesti.

(5) The company's registered capital amounts to 376,400,000 ROL. The company was set up on 1st of October 1998, by the Resolution of the Municipal Local Council no. 81, as a joint-stock company whose sole shareholder is the Municipal Local Council of Fetesti.

(6) S.C. AQUA-TERMO & SERVICE S.A. has its registered office in the City of Fetesti, 503 Calarasi Street and it has been registered in the Commercial Register under no. J21/52/1999, having the tax identification code R 11681072.

(7) The company's main activity consists in the caption, treatment and distribution of water to the population, institutions and companies in the city of Fetesti. The source of water is represented by the underground water at the depth of 80 to 100 meters.

(8) As secondary activity, the company also operates the waste water sewers and it deals in the drainage, transport and distribution of heating power.

(9) The relevant market is the market of water capture, treatment and distribution services. The geographic market is the territory of the City of Fetesti, Ialomita County.

(10) The company has laboratories for physical and chemical testing of water, water treatment boilers, chlorine warehouse and WEDECO chlorination plant.

(11) The distribution network has a total length of 23.0 km and it serves 6,667 household users, 18 Owners Associations, 383 companies and 14 public institutions.

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

(12) The market affected by the granting of financial support assessed in the present decision is the market of the public service of water capture, treating, and distribution services. These services represent 57% from S.C. AQUA-TERMO & SERVICE S.A. Fetesti total activity and the financial support measures granted by the State and notified by S.C. FDEE ELECTRICA DOBROGEA S.A. aim to insure the performance of the public service of water capture, treating, and distribution.

(13) S.C. AQUA TERMO & SERVICE S.A. Fetesti is the only water supplier in the city of Fetesti, Ialomita County.

(14) The economic and financial results, as shown in the balance sheets for 2002-2004, are as follows:

Index	2002	2003	2004
Total turnover – thousand ROL	16,681,854	21,201,249	26,700,965
Turnover on the Romanian market – thousand ROL	16,681,854	21,201,249	26,700,965
Profit/Loss – thousand ROL	-8,652,129	-1,121,540	-11,569,696

Source: notification formular

We can notice that, in spite of the increase of the turnover every year, the company suffers losses, due to the difference between the price of delivery and the operational cost of the public service.

2.4. The financial support measures

(15) The financial support measure notified by S.C. FDEE ELECTRICA DOBROGEA S.A. represents the write-off of the penalties for the period 2002 - may 2005 in the amount of ROL 5,233,056,376. The granting of the notified State aid by S.C. FDFEE ELECTRICA DOBROGEA S.A. Constanta is regulated by the Governmental Emergency Ordinance no. 37/2004 regarding certain measures for diminishing the arrears in the economy.

(16) According to the notification, S.C. AQUA-TERMO & SERVICE S.A. Fetesti did not benefit of any State aid measures in the last three years.

2.5 Costs deriving from the delivery of the service of general economic interest

(17) The public service of water capture, treatment, and distribution is regulated by National Regulatory Agency Town Management (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.

(18) S.C. AQUA-TERMO & SERVICE S.A. Fetesti keeps a separate accounting in which the company's activities are separately registered. The public service of water capture, treatment, and distribution entrusted to the company is thereby distinctly represented from all the others activities delivered by S.C. AQUA-TERMO& SERVICE S.A. Fetesti. The accounting separation for the activities which represents public service is mandatory, imposed by the ANRSC license for delivering such activities.

Table no. 2: Main economic and financial indicators of S.C. AQUA-TERMO & SERVICE S.A. Fetesti related to delivery of the public service for 2002-2004

<i>ROL thousands</i>			
Indexes	2002	2003	2004
Revenues from water capture, treatment and distribution service	9,178,684	13,283,328	15,102,810
Expenses for water capture, treatment and distribution service	13,392,419	16,146,154	19,723,600

<i>Financial result from water capture, treatment and distribution service</i>	-4,213,735	-2,862,826	-4,620,790
<i>Revenues from other activities</i>	7,566,960	8,514,063	12,256,221
<i>Expenses for other activities</i>	12,005,354	6,772,777	19,205,127
<i>Financial result from other activities</i>	-4,438,394	-1,741,286	-6,948,906

Source: supplementary information

(19) From the above table it can be seen that S.C. AQUA – TERMO & SERVICE S.A. Fetesti bears each year certain exploiting costs related to the service of water capture, treatment and distribution, which are higher than the delivery prices established by ANRSC, both for the population and undertakings.

(20) The negative differences between the local water delivery prices and the actual operating costs are listed in Table no. 3 from the Annex.

(21) From the data presented in Table no. 3 result that S.C. AQUA – TERMO & SERVICE S.A. Fetesti suffers losses in the amount of ROL 13,341,977,750, due to the difference between the local delivery price established by ANRSC and the actual production and delivery cost.

(22) Among the causes which lead to the company's losses are the followings:

- the market for water capture, treatment and distribution services is a regulated market; thus, the company cannot charge for this service a price which could cover the exploiting costs and also a reasonable profit;
- high costs for repairing and maintaining of installations and equipments for water capture, treatment and distribution;
- high costs of energy, which represents an important part from the operational costs; this is the result of the high price for the energy and due to the maintenance of installations and equipments which are obsolete and worn out.

3. ANALYSIS OF THE STATE MEASURE OF SUPPORT

3.1. Object of the decision

(23) Based on the notification to the Competition Council by S.C. FDEE ELECTRICA DOBROGEA S.A., the object of the present decision is the financial support under the form of increases and penalties write-off in the amount of ROL **5,233,056,376** due by de S.C. AQUA-TERMO & SERVICE S.A. Fetesti towards S.C. FDFEE ELECTRICA DOBROGEA S.A. Constanta.

3.2. Obligation of service of general economic interest

(24) 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)

(25) S.C. AQUA-TERMO & SERVICE S.A. Fetesti is entrusted with the public service of capture, treatment and distribution of water as main activity, according to the Local Council of Fetesti Decision no. 81 / 01.10.1998.

(26) According to the Law of public management no. 326/2001, the public services must fulfill some essential conditions, as follows:

- 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.

(27) 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.

(28) 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;

- 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.

(29) In addition to the above mentioned, we underline the fact that S.C. AQUA-TERMO & SERVICE S.A. Fetesti is bound to assure the actual functioning of the water capture, 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. AQUA-TERMO & SERVICE S.A. Fetesti is entrusted a service of general economic interest, according to the Local Counsel of Fetesti Decision mentioned above.

3.4. Condition from point 3.2. b)

(30) 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.

(31) The market of water capture, treatment and distribution is a regulated market. The National Agency for Regulating the Public Services of Town's Administration (ANRSC), set up according to HGR no. 373/2003, analysis and approves periodically the delivering prices for water towards population and companies. These prices are situated under the real costs of S.C. AQUA-TERMO & SERVICE S.A. Fetesti due to social protection considerations. In the balance sheet of the company, as well in the price establishing Note, there are presented separately the revenues and the costs incurred by the exploiting activity.

(32) The prices for drinking/waste water are previously established, based on the production and exploiting costs, service and maintaining costs, depreciation costs, as well as a 10% profit.

The costs taken into consideration for settling the water price are the following:

- variable costs, out of which:

- water;
- energy;
- consumables;

- fixed costs, out of which:

- materials;
- depreciation;
- rents;
- other services provided by third parties;
- other material costs;

- labor costs, out of which:

- salaries;
- social insurances costs.

3.5. Condition in 3.2. c)

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

(34) From the data presented in Table no. 3 it can be seen that during the period from January 2002 to May 2005, the company registers losses in amount of ROL 13,341,977,750, occurred from the public service of water capture, treatment and delivery, and from sewerage service. Under these circumstances, the State aid in amount of ROL 5,233,056,376 covers, only to some extent, the losses of S.C. AQUA-TERMO & SERVICE S.A. Fetesti, related to the delivery of the general economic interest service.

(35) Therefore, the State aid granted to the company represents a partial coverage of the costs generated by the delivery of the general economic interest service of water capture, treatment and delivery in the city of Fetesti for the period 2002-May 2005.

3.6. Condition in 3.2. d)

(36) Entrusting the public interest service to S.C. AQUA-TERMO & SERVICE S.A. Fetesti, for water capture, treatment and delivery, was not done through a public tender.

(37) The public service of capture, treating and delivering water was entrusted to S.C. AQUA-TERMO & SERVICE S.A. Fetesti by Local Council of Fetesti Decision no. 81/01.10.1998. Therefore, in order to establish the compensation level, it is necessary to analyze the costs that another well-run undertaking would have had, for delivering the same service. 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 supplier failed to make such a comparison.

(38) As the four conditions under point 24 are not met cumulatively, namely the condition under par 3.6. (d) was not proved, the support measures for S.C. AQUA-TERMO & SERVICE S.A. Fetesti, notified by the S.C. FDEE ELECTRICA S.A. Dobrogea constitute State aid for the purposes of art. 2 of *Law no. 143/1999 on State aid, with subsequent amendments 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*.

(39) The compensations granted for discharging of the general economic interest service constitute compatible State aid 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

(40) The State aid granted to S.C. AQUA-TERMO & SERVICE S.A. Fetesti is strictly necessary for appropriate and continuously operating the public service of water capture, treatment and delivery. 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.

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

(42) The forced execution 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 in the city of Fetesti.

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

(43) The geographical market affected by the State aid is the city of Fetesti. 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

(44) The State aid granted in the form write off of increases and penalties due to 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.

(45) Thus, the two conditions mentioned at par. (39), 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. AQUA-TERMO & SERVICE S.A. Fetesti, representing compensations for performing the service of general economic interest, are compatible State aid with the normal competitive environment.

(46) The total amount of State aid granted to S.C. AQUA-TERMO&SERVICE S.A. Fetesti is of ROL 5,233,056,376.

DECIDES

Art. 1. The analyzed measures of financial support granted to S.C. AQUA-TERMO & SERVICE S.A. Fetesti constitute State aid for the purposes of Art. 2 of *Law 143/1999 on State aid amended and completed by Law 603/2003 and GO 94/2004 on regulation of financial measures*.

Art. 2. The notified State aid represents a necessary compensation to achieve, under normal conditions of safety and continuity the service of general economic interest of water capture, treatment and delivery, which does not unduly affect the trade between Romania and the EU Member States.

Art. 3. Pursuant to Art. 12 (2) (b) read in conjunction with Art. 14 (1) (j) of *Law 143/1999 on State aid, with subsequent amendments and completions*, we authorize the State aid for S.C. AQUA-TERMO&SERVICE S.A. Fetesti as State aid due to the delivery under safety and continuity conditions of the general economic interest service.

Art. 4. Pursuant to Art. 24 of *Law 143/1999 on State aid, with subsequent amendments and completions*, suppliers shall annually submit to the Competition Council information regarding the State aid granted to S.C. AQUA-TERMO&SERVICE S.A. Fetesti in view of its monitoring.

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

Art. According to Art. 20 of *Law 143/1999 on State aid, with subsequent amendments 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:

- S.C. DFEE ELECTRICA Dobrogea S.A. – .Iorga street no.89A, Constanta County;
- S.C. AQUA-TERMO&SERVICE S.A. Fetesti – 503 Calarasi Street , Fetesti Town, Ialomita 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.

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