

DECISION OF COMPETITION COUNCIL
No 160 on 25.08.2005
regarding the State aid notification on S.C. GOSTRANS S.A. ANINA

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. 4172/24.06.2005, registered at the Competition Council with the no. RS-AS 58/29.07.2005, S.C.D.F.E.E. ELECTRICA S.A. BANAT 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. GOSTRANS S.A. ANINA, which is in the suborder of the Anina Local Council.

(2) The notification became affective on the date the information were complete, namely on 11.08.2005.

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

2.2. The beneficiary of state support measure

(4) The beneficiary of the notified support measure is S.C. GOSTRANS S.A. ANINA.

(5) The registered capital of S.C. GOSTRANS S.A. ANINA is ROL 830,100,000. S.C. GOSTRANS S.A. ANINA is entrusted with the public service of capture, treatment and distribution of water as main activity, according to the Decision of Anina Local Council no.51 of 31.10.1994, with the only shareholder the Local Council of Anina.

(6) S.C. GOSTRANS S.A. ANINA is situated in Anina, Caras – Severin County, and is registered at Commerce Register with no.J11/05/1995 under the unique registration code R 7056092.

(7) Beside the main services listed above, S.C. GOSTRANS S.A. ANINA also has secondary activities: collecting and transport of the garbage, cutting, treating the wood, manufacturing carpentry and wood elements for constructions, workings for technical- sanitary installations, etc.

(8) The company has adduction piping with a diameter of 100 mm and 200mm in total length of 10 km, as well as two stations for treating the water. The company also has in its endowment five pumping stations with a power of 900 kw. The water distribution network has a total length of 47,0 km, the delivered water volume being of aprox. 450,000 mc/year.

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 capture, treating, and distribution services. These services represent 51% from S.C. GOSTRANS S.A. ANINA's total activity and the financial support measures granted by the State and notified by S.C.D.F.E.E. ELECTRICA Banat aim to insure the performance of the public service of water capture, treating, and distribution.

(10) S.C. GOSTRANS S.A. ANINA is the sole water supplier in the area of Anina city, Caras - Severin County.

(11) The economical and financial results based on the profit and loss accounts for 2002-2005 are listed in Table 1 and 2.

Table no. 1 - Economic- financial results of S.C. GOSTRANS S.A. ANINA

Indices	ROL thousands		
	2002	2003	2004
Total turnover	7,645,857	11,885,520	13,299,580
Profit/loss	-3,548,042	- 741,003	- 278,385

Source: The notification form

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

2.4. Ways of granting the financial support

(12) The financial support measure notified by S.C.D.F.E.E. ELECTRICA Banat represents the remittance of the delay increments, and penalties in amount of ROL 6,502.64 mil. owed by de S.C. GOSTRANS S.A. ANINA towards S.C. FDFEE ELECTRICA S.A Banat. The granting of this financial support is regulated by EGO NO. 37/2004 measures for decreasing the budgetary arrears.

(13) According to the received data, S.C. GOSTRANS S.A. ANINA 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 capture, treatment, and distribution is regulated by National Agency of Regulation in the field of Services of 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.

(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 capture, treatment, and distribution entrusted to the company is thereby distinct of all the others activities undertaken by S.C. GOSTRANS S.A. ANINA.

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

ROL thousands			
Requirements	2002	2003	2004
Revenues from water capture, treatment and distribution service	3,341,000	4,318,409	4,767,305
Expenses for water capture, treatment and distribution service	6,178,823	7,381,633	8,443,999
Financial result from water capture, treatment and distribution service	- 2,837,823	- 3,063,224	- 3,676,694
Revenues from other activities	4,304,857	7,567,111	8,532,257
Expenses for other activities	5,015,076	5,244,890	5,133,966
Financial result from other activities	-710,219	2,322,221	3,398,309

Source: Supplementary information

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

(17) From the data presented above it can be seen that S.C. GOSTRANS S.A. ANINA attains every year of the analyzed period certain exploiting costs related to the service of water capture, 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	- 5,207	545,000	2,837.8
total 2003	- 6,601	464,000	-
total 2004	- 8,774	419,000	-3,676.7
total 30 April 2005	- 10,718	140,000	-1,500.5
OVERALL TOTAL		1,568,000	-11,078.2

Source: notification form

(19) From the data presented above it results that S.C. GOSTRANS S.A. ANINA registers losses in amount of ROL 11,078.2 mil. in January 2002-April 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 cash in of the bills is made only in a 50 -60% from the total production and services, due to the high poverty degree of the benefiting populations;
- due to the city being situated in a mountain area, its supply with drinking water from the source is made through 5 pumping stations situated a very big level difference (pumping 100%) which implies very high energy consumption;
- reduction of the number of the population and the undertakings from the city area led to the high reduction of the production and the services performed by the company;
- high losses from the delivery network due to its oldness, sewerage channels being old and needing high costs with the maintenance;
- The prices are under the real costs, ANRSC and the Local Council not approving the real prices proposed by SC GOSTRANS SA ANINA based on social protection reasons.

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 S.C.D.F.E.E. Electrica Banat S.A, the object of the present decision refers to the remittal of the delay increments and penalties in amount of ROL 6,502.64 mil. owed by de S.C. GOSTRANS S.A. ANINA towards S.C.D.F.E.E. Electrica Banat S.A.

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. GOSTRANS S.A. ANINA is entrusted with the public service of capture, treatment and distribution of water in the Anina city, according to the Decision of Anina Local Council no. 51/1994.

(24) According to the law of the public management no.326/2001, the supply with capture, 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;
- 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. GOSTRANS SA ANINA 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. GOSTRANS S.A. ANINA is entrusted a service of general economic interest, by an administrative act.

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 capture, 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;
 - water quality expenses
- etc.

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

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

II. Previous period revenues from capture, 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) In the same time, before every financial year, S.C. GOSTRANS S.A. ANINA 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 capture, 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 3 it can be seen that during the period from January 2002 to 30 April 2005, the company registers losses in amount of ROL 11,078.2 mil., 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 6,502.64 mil. covers only to some extent the losses of the company induced by performing the entrusted service of general economic interest.

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

3.6. Condition in 3.2. d)

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

(36) The public service of capture, treating and delivering water was assigned to S.C. GOSTRANS S.A. ANINA by Decision of Anina Local Council no. 51/1994. 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 could not 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. GOSTRANS S.A. ANINA 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) According to the *Regulation on state aid in the form of compensations granted to certain undertakings entrusted with services of general economic interest*, compensations granted in view of discharging the service of general economic interest may constitute state aid compatible with a normal competition environment if the following conditions are met cumulatively:

- (a) the state aid is necessary for operating 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. GOSTRANS S.A. ANINA is strictly necessary for appropriate and continuously operating the public service of capture, 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 Anina.

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 Anina. 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 S.A. Banat 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. GOSTRANS S.A. ANINA, 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. GOSTRANS S.A. ANINA is of ROL 6.502,64 mil. representing the state aid notified by S.C.D.F.E.E.ELECTRICA Banat S.A.

DECIDES

Art. 1. The analyzed measures of financial support granted to S.C. GOSTRANS S.A. ANINA 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 represents a necessary compensation to achieve, under normal conditions of safety and continuity the service of general economic interest for capture, 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. GOSTRANS S.A. ANINA 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. GOSTRANS S.A. ANINA in view of monitoring the aid.

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

Art. Pursuant to Art. 29 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:

- S.C.D.F.E.E. ELECTRICA S.A. Banat –Resita branch, blv. Alexandru Ioan Cuza nr.42, Resita;
- S. C. GOSTRANS S.A. ANINA - no 12 Uzinei Street, Anina, Caras –Severin 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.

.

Annex

Table nr.3 –The evolution of local delivery price, the drinking water cost and of the quantities sold by SC GOSTRANS SA Anina during 2002 – April 2005

Period	Delivery price without T.V.A.		Legal ground	Delivered quantity			Registered unit cost	Losses incurred from the difference between the price and the cost
	Population	Undertakings		Total	From which :			
					Population	Undertakings		
	ROL/mc	Rol/mc		mc	mc	mc	ROL/mc	Thousand ROL
0	1	2	3	4	5	6	7	
jan. 2002	5,494	5,494	OC 4693/10.12.2001	43,000	26,000	17,000	8,456	-127,366
feb 2002	5,494	5,494	OC 4693/10.12.2001	44,000	26,000	18,000	9,553	-178,596
mar 2002	5,494	5,494	OC 4693/10.12.2001	47,000	29,000	18,000	9,987	-211,171
apr 2002	6,159	6,159	OC 1519/18.04.2002	47,000	29,000	18,000	10,095	-170,892
may 2002	6,159	6,159	OC 1519/18.04.2002	47,000	29,000	18,000	10,884	-222,075
june 2002	6,159	6,159	OC 1519/18.04.2002	47,000	29,000	18,000	10,998	-227,434
july 2002	6,159	6,159	OC 1519/18.04.2002	45,000	29,000	16,000	11,064	-220,725
aug 2002	6,159	6,159	OC 1519/18.04.2002	45,000	29,000	16,000	11,078	-221,355
sep 2002	6,756	6,756	OC 3618/25.09.2002	45,000	29,000	16,000	12,914	-277,110
oct 2002	6,756	6,756	OC 3618/25.09.2002	46,000	29,000	17,000	13,869	-327,199
nov 2002	6,756	6,756	OC 3618/25.09.2002	46,000	28,000	18,000	14,065	-336,215
dec 2002	6,756	6,756	OC 3618/25.09.2002	43,000	25,000	18,000	14,144	-317,684
Total year 2002				545,000	337,000	208,000		-2,837,823
jan. 2003	6,756	6,756	OC 3618/25.09.2002	43,000	25,000	18,000	14,444	-330,584
feb 2003	6,756	6,756	OC 3618/25.09.2002	40,000	24,000	16,000	15,318	-342,480
mar 2003	6,756	6,756	OC 3618/25.09.2002	43,000	28,000	15,000	15,522	-376,938
apr 2003	6,756	6,756	OC 3618/25.09.2002	44,000	28,000	16,000	15,630	-390,456

may 2003	10,539	10,539	ANRSC 1847/17.04.2003	42,000	27,000	15,000	15,661	-215,124
june 2003	10,539	10,539	ANRSC 1847/17.04.2003	41,000	26,000	15,000	15,720	-212,421
july 2003	10,539	10,539	ANRSC 1847/17.04.2003	42,000	26,000	16,000	15,873	-224,028
aug 2003	10,539	10,539	ANRSC 1847/17.04.2003	35,000	26,000	9,000	15,920	-188,335
sep 2003	10,539	10,539	ANRSC 1847/17.04.2003	35,000	27,000	8,000	15,965	-189,910
oct 2003	10,539	10,539	ANRSC 1847/17.04.2003	34,000	26,000	8,000	16,355	-197,744
nov 2003	10,539	10,539	ANRSC 1847/17.04.2003	34,000	25,000	9,000	16,572	-205,122
dec 2003	10,539	10,539	ANRSC 1847/17.04.2003	31,000	23,000	8,000	16,671	-190,092
Total year 2003				464,000	311,000	153,000		-3,063,234
jan. 2004	10,539	10,539	ANRSC 1847/17.04.2003	33,000	23,000	10,000	16,938	-211,167
feb 2004	10,539	10,539	ANRSC 1847/17.04.2003	33,000	22,000	11,000	17,764	-238,425
mar 2004	11,793	11,793	ANRSC 133/23.02.2004	36,000	24,000	12,000	18,431	-238,968
apr 2004	11,793	11,793	ANRSC 133/23.02.2004	36,000	25,000	11,000	18,975	-258,552
may 2004	11,793	11,793	ANRSC 133/23.02.2004	35,000	25,000	10,000	19,585	-272,720
june 2004	11,793	11,793	ANRSC 133/23.02.2004	36,000	25,000	11,000	20,175	-301,752
july 2004	11,793	11,793	ANRSC 133/23.02.2004	32,000	25,000	9,000	21,537	-311,808
aug 2004	11,793	11,793	ANRSC 133/23.02.2004	34,000	24,000	10,000	21,798	-340,170
sep 2004	11,793	11,793	ANRSC 133/23.02.2004	35,000	24,000	11,000	21,936	-355,005
oct 2004	11,793	11,793	ANRSC 133/23.02.2004	44,000	22,000	22,000	22,143	-455,400
nov 2004	11,793	11,793	ANRSC 133/23.02.2004	33,000	21,000	12,000	22,394	-349,833
dec 2004	11,793	11,793	ANRSC 133/23.02.2004	32,000	21,000	11,000	22,508	-342,880
Total year 2004				419,000	281,000	138,000		-3,676,680
jan. 2005	11,793	11,793	ANRSC 133/23.02.2004	33,000	20,000	13,000	22,508	-353,595
feb 2005	11,793	11,793	ANRSC 133/23.02.2004	31,000	19,000	12,000	22,495	-331,762
mar 2005	11,793	11,793	ANRSC 133/23.02.2004	40,000	19,000	21,000	22,515	-428,880
apr 2005	11,793	11,793	ANRSC 133/23.02.2004	36,000	21,000	15,000	22,522	-386,244
total jan.-apr. 2005				140,000	79,000	61,000		-1,500,481

TOTAL GENERAL								-11,078,224
--------------------------	--	--	--	--	--	--	--	--------------------

Source : Supplementary information