

DECISION
no. 65 of 23.03.2006

regarding the financial support granted to S.C. VITAL S.A. Baia Mare, in order to co-finance the Project „Rehabilitating and modernizing the services of water and sewerage in the city of Baia Mare, Maramures County, Romania”

The Competition Council

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

Taking into consideration the provisions of Competition Law no. 21/1996, republished in the Official Gazette, Part I, no. 742 of 16.08.2005,

Taking into consideration the provisions of State Aid Law no. 143/1999, republished in the Official Gazette, Part I, no. 744 of 16.08.2005,

Taking into consideration the dispositions of the Regulation on state aid as compensations granted to undertakings entrusted with services of general economic interest, published in the Official Gazette Part I, no. 1048/12.11.2004;

Having regard to the provisions of the Regulation regarding the regional state aid, enforced by Order of the President of the Competition Council no. 55/2004, published in the Official Gazette Part I, no. 340 of 19.04.2004, modified and completed by Order of the President of the Competition Council no. 221/2004, published in the Official Gazette, Part I no. 847 of 16.09.2004,

Having regard to the provisions of the Regulation regarding the form, the content and other details of a state aid notification, published in the Official Gazette, Part I no. 82 of 25.01.2005;

Having regard to the Decree no. 57/2004 regarding the appointment of the Competition Council,

Based on the following,

1. PROCEDURE

- (1) By the note no. 107068/30.01.2006, registered at the Competition Council no. RS-AS 19/30.01.2006, the Ministry of Public Finance notified, based on art. 15 from the *Law no. 143/1999 regarding state aid, republished*, the financial support for SC VITAL SA Baia Mare (hereafter VITAL).

- (2) By the notes DAAS/276/15.02.2006, additional information was requested, based on art. 15 (4) of the *Law no. 143/1999, republished*. The Ministry of Public Finance submitted the answer to the requested supplementary information by the address registered at the Competition Council with no. nr. DAAS/313/22.02.2006, RG/1961/24.02.2006 and DAAS/358/01.03.2006.
- (3) The notification became effective as of the date when the information was accurate and complete, namely on 01.03.2006.

2. DESCRIPTION OF THE MEASURE OF FINANCIAL SUPPORT

2.1. The beneficiary of the support measure granted by the state

- (4) The beneficiary of the notified support measure is VITAL, under the authority of Baia Mare Local Council.
- (5) VITAL was established according to the provisions of the Decision of the Local Council no. 131/1997, the DLC no. 266/2003, the Law no. 326/2001 *the public services of country management* and of the G.D. no. 32/2002 *on the public services of water management and sewerage*, as economic undertaking with legal personality, which functions based on economic administration and financial autonomy, for the management of services in the public domain (i.e. the water supply and sewage systems) required to discharge the public services of water supply and sewage systems.
- (6) VITAL has its social headquarters in the Baia Mare town, no. 21 Gheorghe Sincai Str., Maramures County and was registered at the Registry of Commerce under no. J 24/542/1997, CUI 9710087.
- (7) Presently, VITAL's equity amounts RON 3,210,270 divided in nominative shares, each having a nominal value of 10 RON/share, entirely owned by the Baia Mare Local Council.
- (8) The economic-financial results obtained by VITAL during 2002-2005 are presented in the Table no.1.

Table no.1 - Vital's economic -financial results

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No.crt.	INDICATOR	2002	2003	2004	30.06.2005
1.	Net turnover	8,227,883.0	10,878,039.7	12,914,030.0	7,186,969.6
2.	Net profit	7,924.8	34,457.4	10,059.4	6,507.7

Source: Notification form

From the data in the above presented table it results that, in each year during 2002-2005, the company registers, on its entire activity, a positive financial result.

- (9) According to its setting up deed, the main activity of VITAL is the provision of the following services of town management: the sourcing, treatment and distribution of drinking water and the collection and treatment of waste waters, National Classification of Economic Activities (NACE) code 4100. According to art. 2 of the *Law on public services of town management no. 326/2001*, establishing the legal framework regarding the set-up, organization, monitoring and control of the functioning of public services of

town management in counties, cities and villages, the public services of town management represent the total activities and utility actions of local interest, carried out under the authority of the local public administration, having as purpose the supply of public utility services.¹

- (10) By the license granted by the National Agency of Regulation in the field of Services of Town Management (hereinafter called A.N.R.S.C.), the company is entrusted with the discharge of public services of water supply and sewage.
- (11) VITAL directly administrates and operates the public systems for the supply of drinking water and sewerage from the administrative area of Baia Mare town, based on the concession contract for the public services of water and sewerage from Baia Mare town no. 13927/2005.
- (12) VITAL's obligations, as a provider of public services of town management are, in principle, the following:
- a) to supply all consumers in the coverage area for which it was authorized/ certified;
 - b) to observe the performance parameters set by local public administration authorities, or by the national regulating authority;
 - c) to provide the local public administration authority, respectively the national regulating authority the information required and to allow access to the utilities' documents, according to the clauses of the operating agreement.
- (13) Given the above, the public services of general economic interest entrusted to the company are:
- supply of drinking water (the public service of drinking water supply entails mainly the sourcing, treatment of water, transport and distribution of drinking water);
 - sewerage (the public service of sewerage entails the following: collection and transport of waste domestic water from users to the treatment facilities, treatment of waste water and its disbursement, collection, evacuation and adequate treatment of the waste from drainage slots and the assurance of their functionality, the supervision of the evacuation of industrial waste water in the sewerage system, evacuation and treatment of sludge and other similar waste derived from the activities mentioned above, as well as their storage).
- (14) The services for the supply of drinking water and sewerage services represent 95.9% from the total activity carried out by VITAL. Given the fact that there is only one sewerage network in the Baia Mare town, the Company takes over the domestic and meteoric waste water as well as industrial, the latter activity having a non significant contribution to the entire activity of VITAL. It should be mentioned that each undertaking has the obligation to ensure the pre-treatment of the waste industrial water resulted from its activity before discharging it in the sewerage network, so that VITAL does not carry on any activity of treating industrial water.

¹ The ancillary activities carried out by VITAL consist in the maintenance and cleaning of buildings and undergrounds, engineering works for sanitary and central heating equipments to buildings, lease and sub-lease of the company's real estate, rental of machinery and equipment for constructions and installations, design and execution of construction works, exterior and interior water installations, sewerage and heating, installing and repair of metering devices, etc.

- (15) The weight of the public services of drinking water supply and sewerage for the population and public institutions represents 65% of the total public services discharged by VITAL.

2.2. The sector affected by the financial support granted to VITAL

- (16) The sector affected by the granting of the financial support analyzed in the present decision is the provision of public services of water supply and sewerage.
- (17) The public services of water supply and sewerage function in a centralized system and are organized under the coordination and control of the local public administration authorities, based on the local autonomy principle. The relevant geographical area is represented only by the Baia Mare town. I.e. prices and tariffs of the services are regulated and not determined by supply and demand, but approved by the local public administration – the Baia Mare Local Council - and adjusted and agreed by A.N.R.S.C. The service provider is bound to ensure the supply of services to all connected to the network, without discrimination. Also, all consumers connected to the drinking water and sewerage network of the city are captive consumers, because they do not have the possibility to choose their service supplier.
- (18) VITAL is the only provider of public services for the supply of drinking water and sewerage in the area it discharges the service, respectively the Baia Mare town.

2.3. The financial support

- (19) The Ministry of Public Finances contracted a direct loan from the European Investment Bank (hereby named EIB), loan that will be sub-loaned under the same conditions to VITAL. The value of the loan is of Euro 11,948,700 to be reimbursed in 2010-2029, with an interest rate of 3.85% per year.
- (20) The loaned funds are destined to co-finance the project „Re-habilitating and modernizing the services of water and sewerage in Baia Mare town” (hereafter named the Project), for which VITAL benefits from non-reimbursable financial assistance amounting Euro 29,840,300 by the Instrument for *Structural Policies for Pre-Accession*. The conditions to accomplish the Project, its financing and implementing ways are regulated by the *Financing Memorandum* agreed between the *Government of Romania and the European Commission, regarding the non-reimbursable financial assistance granted through the Instrument for Structural Policies for Pre-Accession, for the measure „Re-habilitating and modernizing the services of water and sewerage in Baia Mare town, Maramures County, Romania” signed in Brussels on 8th December 2004 and in Bucharest on 14th February 2005, published in the Official Monitor, Part Ist, no. 687 bis on 01.08.2005.*
- (21) *Financing Memorandum* agreed between the *Government of Romania and the European Commission, regarding the non-reimbursable financial assistance granted through the Instrument for Structural Policies for Pre-Accession, for the measure „Re-habilitating and modernizing the services of water and sewerage in Baia Mare town, Maramures County, Romania” signed in Brussels on 8th December 2004 and in Bucharest on 14th February 2005, published in the Official Monitor, Part Ist, no.687 bis on 01.08.2005 and the GD no. 1088/2005 on the approval of the technical-*

economic indicators related to the investment objective enclosed in the ISPA program „Re-habilitating and modernizing the services of water and sewerage in Baia Mare town, Maramures County, Romania”.

(22) At the same time, in accordance with the *EGO no.198/2005 on the establishment, financing and using the maintenance, replacement and development funds for the projects regarding the development of the public services' infrastructure which benefits of financial assistance from the European Union*, the sums representing the tax on profit, dividends and the monthly royalties that VITAL owns to the budget of the Baia Mare Local Council shall be returned to the company and shall be also used to co finance the Project, namely to reimburse the loan, the interests and commissions. These sums will be constituted in a special fund for maintaining and development of the Project. In accordance to the received supplementary information, the estimated amount of these facilities is of RON 17,828,042, as follows:

- Tax on profit: RON 5,457,732;
- dividends : RON 11,325,787.2;
- royalties: RON 1,044,522.8.

2.4. Description of the Project

(23) Taking into consideration the high obsolated and old degree of the public infrastructure of water and sewerage in Baia Mare town, it was identified the neet to make certain re-habilitating, modernizing and developing investments. Due to the fact that VITAL is entrusted with the discharge of public services of water supply and sewerage in Baia Mare town, the obligation to realize the Project belongs to this undertaking.

(24) The value of the Project is of 42,629,000 Euro being financed as follows:

- ISPA assistance- Euro 29,840,300 (70% from the Project's eligible costs);
- Co-finance portion of the beneficiary of the ISPA assistance (28% from the Project's eligible costs) is provisioned to be ensured from the sub-loan, in amount of – Euro 11,948,700;
- Subsidy from the budget of the Baia Mare Local Council (2% from the Project's eligible costs) in total amount of – Euro 840,000.

To this value are to be added the non-eligible costs of the Project, amounting Euro 3,063,000, which will be supported by the Baia Mare Local Council.

(25) The Project consists of investments regarding the improvement of the systems for supply of drinking water, sewerage and the station for treatment of waste water in Baia Mare City. The financed components of the Project are the following:

- A. Supply and treatment of the drinking water;
- B. Collecting and treating the waste waters;
- C. Technical assistance, supervision during implementation and publicity.

(26) The component A encloses:

- Rehabilitation of the Water Treatment station (UA)

The Baia Mare water station serves at present approx. 115,000 persons (84% from the total number) and 1,740 undertakings, industrial undertakings and institutions. The water supplied by the factory do not fulfill the EU standards for the content in earth

and magnesium. The mechanic and electrical equipment is in an advanced state of obsolescence and, with few exceptions, it reached the end of its life time.

The Baia Mare treatment station will be rehabilitated and modernized as a component of the project. The modernized station water treatment station will have a capacity of 950 l/s (82,080 m³/day) and will be designed so as the supplied water will meet the standards of Directive 98/83/CE on drinking water, and the cleansing water and the storage of the sludge are acceptable for environmental protection purposes. Also, new laboratory equipment will be acquired.

- Rehabilitation and extension of the potable water network

The total length of the water distribution network is of 286 km. The Project includes the reconstruction of about 22 km of distribution pipes to enhance the supply safety and to reduce the water losses. Also, the project includes the construction of about 1.5 km of new pipes to extend the network to 480 people from Valea Borcuțului, which currently uses local water sources.

(27) The B component contains the following:

- Rehabilitation and extension of the sewerage network

The existing system for the collection of waste waters has a total length of 185 km and a maximum depth of 9 m. The ISPA measure includes works to reduce actual deficiencies, as follows:

- Reconstruction of 9 km of canal with defects of gravitational structure;
- Reconstruction of 7 rain water depolluters in order to reduce the pollution of Săsar river by improving the process of separating solids;
- Construction of 5.3 km of canal collector to increase the actual capacity of the network and to reduce the risk of floodings in the city and to allow the closure of the 7 water depolluters in the Săsar river;
- Construction of about 10 km of canal and waste water collectors and pumping station in order to extend the existing sewerage network for 3,110 people (str. Gării, Progresului, Traian, V. Alecsandri, Tăuții de Sus, Orașul Vechi, Valea Borcuțului, A. Vlaicu and Victoriei);
- Purchase of maintenance equipment in order to increase the operating efficiency:
1) a mobile unit to clean canals, provided with CCTV equipment; 2) mobile discharging unit (to be included in the technical assistance).

- Rehabilitation of the Treatment Station

The treatment station designed to ensure the discharge in Săsar river of a effluent complying with the standards provided in the Directive on urban waste water 91/271/EEC to deploy in non-sensitive waters (secondary treatment). When rehabilitating the station will consider its modernization for cost efficiency, as such as to achieve tertiary treatment at a later stage. The laboratory equipment will be substantially modernized.

(28) The C component will include:

- Technical assistance for project implementation;
- Supervision of the works agreements;
- Ensuring publicity for the Project;
- Revision of the Strategic Plan and preparation of the application for the Cohesion Fund;

- Assistance for the valuation of the tender.

(29) The deadlines and costs for the components financed within the Project are presented in the Table no. 2.

Tabel no. 2 - *Financing sources and value to finalize investment objectives included in the Project*

No.	Component	Value (Euro)	Deadline
1.	Treatment and distribution of drinking water	14,848,000	June 2009
2.	Collection and treatment of waste water	23,781,000	June 2009
3.	Technical assistance, supervision during implementation and publicity	4,000,000	December 2009

Source: *Financing Memorandum*

3. ASSESMENT OF THE MEASURE FROM THE STATE

(30) In order to ascertain the applicability of the rules on State aid, the Competition Council has to analyze if the measure constitutes aid within the meaning of *Law 143/1999 on State aid, republished*.

3.1. The object of the decision

(31) The object of the present decision is the financial support under the form of sub-loan granted to VITAL by the Ministry of Public Finances and under the form of facilities granted by the Baia Mare Local Council (see para. 22 and 24). The funds are used for financing an investment objective regarding the infrastructure of water and sewerage of the city.

3.2. Assessment of the measures

(32) Analyzing the overall economic and financial position of VITAL it can be concluded that the company is not in difficulty. It results from the information sent by the beneficiary that VITAL can obtain loans from a commercial bank, at market terms, without the State intervention, but with an interest rate higher than the interest paid by the Ministry of Public Finances for the sub-loan.

(33) The financial support granted by the State under the form of the sub-loan can be calculated in the same way as the net grant-equivalent of a loan granted in preferential conditions, the interest bonus representing the difference between the market interest rate and the interest rate obtained for the sub-loan granted by the State, after any premiums have been paid.

(34) Due to the fact that a commercial bank would have granted VITAL a similar loan, in the market conditions, with an annual interest rate of 6.209%, the Competition Council considers that this rate can be taken as reference when calculating the financial support under the form of preferential loan.

(35) In these circumstances, the financial support granted in the form of loan in preferential conditions is calculated as the discounted difference between the market

interest rate and the interest rate of sub loan, respectively: EURO 3,569,145.7 the equivalent of RON 12,891,754.3.²

- (36) The financial support to be granted to VITAL by the Baia Mare Local Council as budgetary allocations to co-finance 2% of the Project value in amount of EURO 840,000 (the equivalent of RON 3,034,080³), the non-eligible expenses of the project in amount of EURO 3,063,000 (the equivalent of RON 11,063,556⁴) as well as profit tax, dividends and the monthly royalty which VITAL owes to the Local Council budget and will be returned to the company in order to co-finance the Project, to constitute a special maintenance and development fund of the Project, in estimated amount of RON 17,828,042.
- (37) The total amount of the financial support to be granted to VITAL for the Project is of RON 44,817,432.3.

3.3. Analysis of the financial support in the context of the rules on regional aid for investments

- (38) Taking into account that the aid is designed to finance some investment objectives, the Competition Council assessed the financial support under Art. 2 and Art. 23 of *Law 143/1999, republished*, and the *Regulation on regional aid*.
- (39) VITAL is located in the 6 North-West development region of Romania. As stated under par. (8) of this Decision, VITAL is not a company in difficulty, thus being eligible for regional aid in accordance with Art. 1 (4) of the *Regulation on regional aid*.
- (40) In accordance with Art. 5 of the *Regulation on regional aid*, the notified financial support is aid for initial investment as it serves the expansion, rationalization and modernization of an existing unit.
- (41) The financial support is granted individually to VITAL in the context of co-financing the Project. The Competition Council therefore notes that the aid in question is not granted in the framework of any regional scheme previously approved. Therefore, the aid is considered as ad hoc aid. It has to be noted however, that the state did not merely pursue a specific or sectoral policy in granting the aid nor did they primarily follow the goal to promote the region.
- (42) Regional aid measures differ from the other categories of government support in that they are reserved for particular regions and have as their specific aim the development of those regions. In the Romanian context, this applies to all of the country. Regional aid is designed to develop the less favoured regions by supporting investment and job creation in a sustainable context.
- (43) In the present case however, these objectives are not the primary goals of the aid granters. The aim is rather, to provide a reliable water management and sewerage system for the citizens of Baia Mare. The maintenance of such a system has to be

² The calculation used the NBR exchange rate from 31.01.2006, respectively Euro 1= RON 3.6120.

³ The calculation used the NBR exchange rate from 31.01.2006, respectively Euro 1= RON 3.6120.

⁴ The calculation used the NBR exchange rate from 31.01.2006, respectively Euro 1= RON 3.6120.

considered to be a public service obligation. Following the nature of the investment project, the Competition Council concludes, that the rules on SGEI seem to be “closer” than those on regional aid. At the same time, the Competition Council acknowledges that the rules on services of general economic interest are derogatory provisions.

- (44) In addition, the Competition Council underlines that all the investment objectives which will be achieved within the Project are not part of the private patrimony of the beneficiary, respectively VITAL, but part of the water and sewage public infrastructure of Baia Mare, which is property of the Romanian state, namely public property of the Baia Mare Local Council (*Law 213/1998 on public property and legal status*).
- (45) Leaving these general considerations aside, the Competition Council concludes the following concerning the compatibility of the measures in the context of the regional aid regulation:
- (46) Art. 8 of the *Regulation on regional aid* provides, that in order to ensure that the productive initial investment benefiting from aid is viable and sound, the recipient’s contribution to its financing must be at least 25 %. This criterion is presently not fulfilled, VITAL having no contribution from its own sources to the financing of the eligible costs (i.e. own sources not touched by state support).
- (47) Regarding the maintaining of investments for a period of minimum 5 years, given that they are part of the technical-urban infrastructure of the city, it may be deemed that they shall be maintained for the whole duration of their functioning.
- (48) Vis-à-vis the above arguments, the Competition Council concludes that the criteria to authorize a regional aid for investments are not met cumulatively.
- (49) Since the services of water and sewerage supply, performed by VITAL have the character of a public-service-obligation, by derogation from the general state aid rules, the recent case law of the ECJ in the context of the definition of state aid in this field (*Altmark-Judgement*) and *the Regulation on state aid in the form of compensations granted to certain undertakings entrusted with services of general economic interest* have to be taken into account.

3.4. Analysis of the financial support based on the provisions of the *Regulation on state aid in the form of compensations granted to certain undertakings entrusted with services of general economic interest*

3.4.1. General background

- (50) The financial support granted to a company performing a service of general economic interest is not considered State aid for the purposes of Art. 2 of *Law 143/1999 on state aid, republished*, if the following conditions are cumulatively met:
 - a) the obligation to discharge a service of general economic interest is entrusted through a normative/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 revenues and a reasonable profit from meeting the service of general economic interest obligations.

3.4.2. The condition from par. 3.4.1. a):

- (51) VITAL is entrusted to deliver public services of water supply and sewage by the license approved by ANRSC no. 156/22.12.2003 and extended by license issued by ANRSC no. 129/28.02.2005. In the license there are provided, among others, the specific obligations of the undertakings delivering services of general economic interest as follows: continuity in supplying water and sewage, ensuring access to networks for new customers, equal treatment applied to all customers, achieving performance standards. Also, by G.D. no. 1591/2002, the company is obliged to deliver these services at prices and tariffs approved by the County Council and established by the ANRSC.
- (52) According to the *Law on town management no. 326/2001*, the water supply and sewage services are public utility services.
- (53) According to Law no. 326/2001, 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.
- (54) The supply of the public service of drinking water and sewerage is achieved through the public system for water and sewerage, part of the technical-municipal infrastructure of the town. The administration of the water and sewerage system, necessary for delivering the general economic interest service is entrusted to the county company by the Local Council of Baia Mare by the concession contract no. 13927/15.06.2005.
- (55) Regarding the above presented facts, we underline that VITAL is under the obligation to ensure the effective functioning of services relating to the transport,

distribution and supply of drinking water which are essential for the population, institutions and undertakings of Baia Mare as well as collection, transport and treatment of domestic and meteoric waste water of Baia Mare. Furthermore, the company is required to provide these services at a regulated price that is intended to ensure the affordability for the consumer. Consequently, one can conclude that VITAL is entrusted, by license, with the discharging of a service of general economic interest.

3.4.3. The condition from par. 3.4.1. b):

- (56) According to this criterion the compensation for the discharge of the public service of general economic interest obligation must be calculated on pre-established objectives and transparent parameters and may not grant an economic advantage to the beneficiary.
- (57) According to the provisions of G.O. no. 32/2002 *on the management and functioning of public services of water supply and sewage*, establishing, adjusting, modifying the prices and tariffs for the public services of water and sewerage must be approved by ANRSC, irrespective the organizational or property form of the operators delivering such services. The level of prices and tariffs approved by ANRSC is mandatory for all operators and must assure a balance between the affordability of the users and the economical viability of the operators of public services.
- (58) The prices and tariffs for public services of water supply and sewage are justified in advance according to transparent parameters such as: production and operating costs, maintenance costs, the annual depreciation of tangible and intangible assets; when setting up prices and tariffs it is taken into consideration the interest and the credits that need to be repaid, as well as a reasonable profit. The structure and the level of tariffs must represent the real cost of supplying/delivering the service, to discourage the excessive consumption, to encourage the efficient supply of services, to assure the environment protection, to encourage capital investments and to be correlated with the users' affordability degree.
- (59) The operators which demand the establishment, adjustment or amendment of prices and tariffs for water supply and sewage have the obligation to transmit A.N.R.S.C. the following documents:
- a request for establishing, adjustment or amendment which comprises: the present prices, the requested prices and the justification for the proposal of establishment, adjustment or amendment;
 - the justification fiche of requested prices and tariffs;
 - other data and information necessary for the justification of the proposed prices and tariffs.
- (60) The justification of prices for drinking water/sewerage is set up in advance, based on the following elements:
- I. Costs from the previous period:
1. material costs: untreated water, technological losses, electricity, technological materials, annual depreciation, administration repairs, water quality protection costs, and others;
 2. employment costs (salaries, employer's contribution to the social insurance fund and to the health insurance fund, unemployment fund);
 3. financial expenses (interest, commissions, others).

II. Revenues from the previous period from production, transport, distribution of drinking water and revenues from sewage;

III. Previous period profit;

IV. Developing quota;

V. Drinking water quantity delivered, including own consumption;

VI. Quantity of domestic and meteoric waste water processed;

VII. Price/unitary tariff from the previous period.

(61) Starting from these entry data, the prices/tariffs adjusted for the next period are determined taking into consideration the following criteria:

- For expenses for untreated water, energy and materials representing an important part of costs, the amendment of purchasing prices compared with the previous period is done within the limit of market prices;
- Specific consumption of untreated water, energy, fuels and materials shall be considered to a level equal to the one from the previous amendment;
- For employment costs, the justification is made according to the legislation in force, correlated with the economical efficiency principle;
- Depreciation costs and/or royalty are taken into consideration, observing the legal regulations in force;
- In the delivery price of water shall be included the technological losses for the production system, transport and distribution, approved by the authorities of the local public administration;
- The supplied drinking water quantities and the domestic and meteoric waste water processed shall be taken into consideration at the level taken into consideration at the previous approval.

(62) Before the beginning of every financial exercise, VITAL is justifying its revenues and expenditures budget, which is subject to the analysis and approval of the Baia Mare Local Council. In the budget are distinctly presented the revenues and expenditures related to the operating activity, as well as the planned investments to be realized in the respective year. The projected investments are presented by programs and components, specifying the cost of each component, the financing sources, and related deadlines. Thus, the costs related to investments required by the good functioning of the public system of water and sewerage is set in advance. At the same with the calculation for the prices and tariffs, the operator submits to ANRSC a Technical Memorandum with the main characteristics from the feasibility studies of the investments to be realized in the water and sewerage infrastructure.

3.4.4. The condition from point 3.4.1. c):

(63) Condition 3.4.1.c) provides that this compensation must not be higher than the necessary to cover the costs incurred through the provision of the service for general economic interest.

(64) As pointed in para. (37), the financial support granted to VITAL is in total amount of RON 44,817,432.3.

(65) The financial support is granted by the state in order to co-finance the Project. The financial support was necessary to ensure the co-financing of the beneficiary of 28% from the eligible costs of the Project (a minimum of 25% represents an indispensable condition for obtaining the non-reimbursable financing from ISPA Program).

(66) Analyzing the economic and financial position of VITAL at the moment of contracting the sub-loan, it can be observed that the company does not have sufficient resources to sustain by itself the co-financing of a project of this size, being forced to apply for a loan. Therefore, the Ministry of Public Finances sub-loans to it the funds contracted from EIB with an interest (namely 3.85%) smaller than the interest that the company could obtain for a credit contracted from a commercial bank (6.209%).

(67) According to the feasibility study related to the investment and Financing Memorandum, in order to meet the expenses related to the EIB loan (interest, fees, instalments), VITAL has to adjust its tariff, as follows:

- an increase in real terms of the tariffs for drinking water and sewerage by 26% until 01.07.2005, compared to the tariff existing at 01.07.2004;
- an increase in real terms of the tariffs for drinking water and sewerage by 24% until 01.01.2006, compared to the tariff existing at 01.07.2005;
- an increase in real terms of the tariffs for drinking water and sewerage by 20% until 01.01.2007, compared to the tariff existing at 01.01.2006;
- an increase in real terms of the tariffs for drinking water and sewerage by 11% until 01.01.2008, compared to the tariff existing at 01.01.2007.

According to studies of the regulatory authority, the above percentages represent ceilings by which the consolidated tariff can be adjusted for the public services of drinking water supply and sewerage, given Baia Mare consumers' affordability.

(68) In the hypothesis VITAL would not have received the State support for co financing this Project, the costs it had supported from its own resources and other sources taken under market conditions have been significantly higher. The difference between the total cost of the public services of water and sewerage supply if the company receives State support and their total cost if financing the Project from its own resources result from the data enclosed in the Table no. 3.

Table no. 3 – The supplementary costs related to the performance of the public service in the hypothesis of co financing the Project from its own sources, during 2005-2029

Year	The average cost per unit of the SIEG if receiving State aid ⁵		The average cost per unit of the SIEG if financing the Project from its own sources ⁶		The total quantity of water supplied and cleaned		Difference between the total cost of the service if granting the state aid and the total cost of the service if financing the project from the company's own sources		
	RON/m3		RON/m3		RON/m3		RON		
	water	sewerage	water	sewerage	water	sewerage	water	sewerage	TOTAL
1	2	3	4	5	6	7	8=(4-2)*6	9=(5-3)*7	10=8+9
2005	0.890	0.420	0.909	0.441	14,329,280	12,931,028	272,256.32	271,551.59	543,807.91
2006	1.110	0.530	1.149	0.550	13,371,392	12,780,128	521,484.29	255,802.56	777,086.85
2007	1.333	0.645	1.506	0.816	12,778,715	12,592,381	2,210,717.70	2,153,297.15	4,364,014.85
2008	1.484	0.731	1.734	0.993	12,387,701	12,213,255	3,096,925.25	3,199,872.81	6,296,798.06
2009	1.495	0.747	1.764	1.008	12,455,931	12,343,828	3,350,645.44	3,221,739.11	6,572,384.55
2010	1.651	0.827	1.868	1.088	12,687,265	12,573,080	2,753,136.51	3,281,573.88	6,034,710.39
2011	1.840	0.949	1.880	0.989	13,955,992	13,816,432	558,239.68	552,657.28	1,110,896.96
2012	2.018	1.036	2.062	1.076	14,107,677	13,966,600	620,737.79	558,664.00	1,179,401.79
2013	2.013	1.030	2.047	1.070	14,868,060	14,719,379	505,514.04	588,775.16	1,094,289.20
2014	2.008	1.022	2.052	1.062	16,057,505	15,896,930	706,530.22	635,877.20	1,342,407.42
2015	2.004	1.016	2.036	1.056	16,908,553	16,739,467	541,073.70	669,578.68	1,210,652.38
2016	2.001	1.012	2.039	1.052	17,720,163	17,542,961	673,366.19	701,718.44	1,375,084.63
2017	2.000	1.010	2.040	1.050	17,720,163	17,542,961	708,806.52	701,718.44	1,410,524.96
2018	1.999	1.008	2.041	1.028	17,720,163	17,542,961	744,246.85	350,859.22	1,095,106.07
2019	1.998	1.006	2.042	1.046	17,720,163	17,542,961	779,687.17	701,718.44	1,481,405.61
2020	1.996	1.005	2.044	1.045	17,720,163	17,542,961	850,567.82	701,718.44	1,552,286.26
2021	1.995	1.003	2.039	1.043	17,720,163	17,542,961	708,806.52	701,718.44	1,410,524.96
2022	1.994	1.001	2.026	1.021	17,720,163	17,542,961	567,045.22	350,859.22	917,904.44
2023	1.993	0.999	2.027	1.019	17,720,163	17,542,961	602,485.54	350,859.22	953,344.76
2024	1.992	0.998	2.028	1.018	17,720,163	17,542,961	637,925.87	350,859.22	988,785.09
2025	1.990	0.996	2.030	1.016	17,720,163	17,542,961	708,806.52	350,859.22	1,059,665.74
2026	1.989	0.994	2.011	1.014	17,720,163	17,542,961	389,843.59	350,859.22	740,702.81
2027	1.989	0.992	2.012	1.012	17,720,163	17,542,961	425,283.91	350,859.22	776,143.13
2028	1.987	0.990	2.013	1.010	17,720,163	17,542,961	460,724.24	350,859.22	811,583.46
2029	1.986	0.989	2.014	1.009	17,720,163	17,542,961	496,164.56	350,859.22	847,023.78
TOTAL							23,891,021.44	22,055,514.60	45,946,536.04

Source: Supplementary information

From the data presented above, the financing of the Project from own resources would lead to supplementary costs for the public services of drinking water and sewerage of RON 45,946,536.04; this would determine a tariff increase beyond consumers' affordability.

(69) From the comparative assessment of the supplementary costs that the company should bear if financing the project from its own sources, supplementary costs amounting RON 45,946,536.04 and the financial support the form of the sub-loan granted by the

⁵ The state aid consists in the sub-loan granted by MPF and the facilities granted by the Local Council for reimbursing this loan (exemption from the payment of owed royalties, tax on profit and dividends);

⁶ It is taken into account the hypothesis that the company would contract, from a commercial bank without the intervention of the state, a credit amounting Euro 11,948,700 and reimburse it totally from its own sources, without the support of the Local Council.

Ministry of Public Finances and of the exemption from the payment of royalties, tax on profit and the dividends owed to the Baia Mare Local Council in total amount of RON 44,817,432.3 it results that these are merely a compensation granted to VITAL for performing the obligation of public service of general economic interest, namely supplying with drinking water and sewerage. Without the financial support granted by the state, VITAL could not co finance the Project unless increasing the tariff to a level which would have exceeded the final consumers' possibility to bear it.

3.4.5. Condition in 3.4.1. d):

- (70) VITAL was not entrusted with the service of general economic interest to supply drinking water and sewage following a public tender procedure.
- (71) The public service to supply drinking water and sewage was entrusted to VITAL by license from A.N.R.S.C. and a comparative analysis of its costs with those of a well-run undertaking providing the same service could not be realized by the grantor.
- (72) Considering the above, the Competition Council concludes that the four conditions under point 3.4.1 are not met cumulatively, mainly the condition under par. 3.4.1 (d) was not proved. Therefore, the measures of support for VITAL constitute state aid for the purposes of *art. 2 of Law 143/1999 on State aid, republished* and of the *Regulation on state aid in the form of compensations granted to certain undertakings entrusted with services of general economic interest*.
- (73) The value of the state aid granted to VITAL is of RON 44,817,432.3.

3.4.6. Assessment of the compatibility of the state aid in the context of the *Regulation on state aid in the form of compensations granted to certain undertakings entrusted with services of general economic interest*

3.4.6.1 General background

- (74) The ECJ has consistently held that Article 86 EC may provide for an exemption from the ban on state aid for undertakings entrusted with a service of general economic interest (SGEI). This hypothesis has been implicitly confirmed in the Judgment of the ECJ in the Altmark Case, that state aid which compensates for the costs incurred by an undertaking in providing an SGEI can be regarded as compatible with the common market if it meets the conditions of Article 86(2) of the EC Treaty⁷. The ECJ has made it clear that, for a measure to benefit from such exemption, the principles of definition, entrustment and proportionality must all be fulfilled. The Competition Council

⁷ Judgment of 24 July 2003 in Case C-280/00 *Altmark Trans*, paragraphs 101 to 109. In those paragraphs the Court examined the question of whether some state payments to transport undertakings classified as state aid could be found to be compatible with the common market under Article 77 of the EC Treaty as reimbursement for the discharge of public service obligations. It did not rule out this possibility, provided that the binding conditions laid down by the secondary legislation for the transport sector were met. This reasoning must apply *mutatis mutandis* to undertaking entrusted with an SGEI outside the transport sector and in relation to Article 86(2) EC.

considers that, where these principles are fulfilled, the development of trade is not affected to an extent contrary to the interests of the Community.

(75) 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.

3.4.6.2. The state aid is necessary for operating a service of general economic interest

- (76) In order to appreciate the necessity of granting the state aid for operating the service of general economic interest, the following conditions must be considered:
- the beneficiary must be officially entrusted the obligation to discharge a public service of general economic interest, clearly defined;
 - the compensation level must not exceed what is necessary for the performing of that respective public service, taking into account the relevant revenues and a reasonable profit resulting from discharging these obligations.
- (77) As discussed under point 3.4.2 above, VITAL is discharging a service of general economic essential for the population, institutions and undertakings and this obligation is clearly defined by license.
- (78) VITAL is providing a service of general economic essential for the population, institutions and undertakings and this is clearly defined by license A.N.R.S.C. This license, together with the relevant law, clearly define the obligation of the public service that the company must perform. Therefore, we can conclude that VITAL has been officially entrusted with the public service that it discharges.
- (79) Also, from the assessment made at point 3.4.4, it results that, under the conditions of a regulated market from the point of view of prices and tariffs, in order to perform this service the company cannot impose its own prices on consumers, prices that could cover the real operating costs. In establishing the prices and tariffs must be taken into consideration the consumers' affordability degree. This is the main reason for which VITAL receives state aid. The compensation granted to VITAL does not exceed the costs incurred by the performance of the above-mentioned public service of general economic interest, in the scenario of financing the investments from own sources obtained under normal market terms.
- (80) Therefore, one can conclude that the state aid granted to VITAL does not exceed what is necessary to discharge under normal conditions of continuity, safety and comfort the public services of drinking water and sewerage supply within the city of Baia Mare.

(81) By implementing this Project it is aimed the significant improvement of the performance indicators of the public services of water and sewage supply in Baia Mare, as follows:

Regrading the water component:

- Supply of drinking water supply shall fulfil the standards provisioned in the Directive on drinking water no. 98/83/EC;
- Enhancing the supply safety standards by replacing pipes with structural faults;
- Reduction of water losses.

Regarding the sewerage component:

- Decreasing the population's risk to get ill by extending the collection of the used waters from the entire population of Baia Mare;
- Reduction of infiltrations in the system;
- Reduction of floodings;
- Compliance with the standards of Directive 91/271/EEC treatment of urban waste waters;
- Reduction of Săsar river pollution due to the poorly treated waste water effluent and rain water deployers without retainers.

Table no. 4 - Performance indicators of the water supply and sewerage public service within Baia Mare

Performance indicators	Before ISPA	After ISPA
<i>Drinking water</i>		
Coverage of water/waste water services	85%	85.4%
Revenues from metering of consumption	85%	97%
Water billed by volume	91%	100%
Average production	70,201 m3/day	59,800 m3/day
Water treatment capacity	107,568 m3/day	82,080 m3/day
Water losses	20,624 m3/day	18,149 m3/day
Compliance of supplied water with EU Directive on drinking water	55%	100%
<i>Collecting and treating waste water</i>		
Population connected to the sewerage network	81%	83%
Average collected flow	100,323 m3/day	80,000 m3/day
Average treated flow (primary only)	21,600 m3/day	0 m3/day
Average treated flow (primary and secondary only)	43,200 m3/day	79,890 m3/day
Infiltrations	50,000 m3/day	43,400 m3/day
Compliance with EU standards on urban waste waters	cca. 30%	100%

Source: Financing Memorandum

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

(82) It needs to be noted that the activity of the company is restricted to a limited geographical area represented by the area of Baia Mare. VITAL is the only operator on this market. The company is not involved in export operations. Under these circumstances it is considered that granting this state aid does not unduly affect the trade between Romania and the Member States.

3.4.6.4. There is no over-compensation

- (83) The state aid granted to VITAL does 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 under safety, continuity and comfort conditions for the citizens of Baia Mare.
- (84) Thus, the two conditions provided at point (75), 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.

3.4.6.5. Transparency

- (85) According to the provisions of the Law nr. 326/2001 on public services of town management, the undertakings discharging public services have to keep separate records of the performed activities, with separate accounting for each type of service, so that their activities are easy to assess, monitor and control.
- (86) In order to maximize the transparency, in the Financing Memorandum it is provisioned that the body involved in the management and implementation of the Project must have a separate accounting system, or an adequate accounting coding system for all the involved transactions, therefore facilitating the checking, by the national control authorities and by the European Commission, of the incurred costs, to make sure that these were correctly allocated for the subjected Project. It shall be insured the availability of all justifying documents on the costs made for the Project's accomplishment, on a 5 year period from the date of last payment.
- (87) The exemption provided for in the *Regulation on state aid in the form of compensations granted to certain undertakings entrusted with services of general economic interest* is applicable to the ad hoc measure in question. As stated above, the state aid has been granted for the compensation of a clearly defined general obligation of public services of general economic interest. The ad hoc measures are proportionate to the public service costs discharged by VITAL; thus, it does not distort competition in such a manner to impede on the common interest.
- (88) The notified state aid amounting RON 44,817,432.3 is compatible with a normal competitive environment.

DECIDES

- Art.1.** The financial support granted to SC VITAL SA Baia Mare to finance the project „Rehabilitation and modernization of the water and sewerage services in Baia Mare, county of Maramures, Romania” represents state aid in the sense of art. 2 (1) of *Law 143/1999 on State aid, republished*.
- Art.2.** The notified state aid represents a compensation necessary to accomplish in normal safety and continuity conditions for the services of general economic interest of supply with drinking water and sewerage, compensation which does not unduly affect the trade between Romania and the Member States of the European Union.

Art.3. Pursuant to Art. 21 align. 2 (b) corroborated with Art. 23 par. 1 (j) of *Law 143/1999 regarding state aid, republished*, the state aid for SC VITAL SA Baia Mare in amount of RON 44,817,432.3 is authorized as aid to achieve under conditions of safety and continuity the service of general economic interest.

Art.4. Pursuant to Art. 32 of *Law 143/1999, republished*, the grantor shall annually submit to the Competition Council information regarding the state aid granted to SC VITAL SA Baia Mare, in view of monitoring the aid.

Art.5. The present Decision shall become effective upon its communication date.

Art.6. Pursuant to Art. 46 of *Law 143/1999 regarding state aid, republished*, 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. The present decision shall be communicated by the Secretariat General of the Competition Council to:

- Ministry of Public Finance, Str. Apolodor nr. 17, sector 5, Bucuresti;
- Baia Mare Local Council, Str. Gheorghe Sincai no. 37, Baia Mare, Maramures county;
- SC VITAL SA Baia Mare, Str. Gheorghe Sincai no. 21, postal code 430311, Baia Mare, Maramures county.

PRESIDENT

MIHAI BERINDE