

DECISION no. 11
as of 31.01.2006

regarding the financial support granted to County Company APA SERV SA Piatra-Neamt, in order to co-finance the Project „Improvement of drinking water supply, sewerage systems and the station for the treatment of waste water in the city of Piatra - Neamt”

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

Based on the following,

1. PROCEDURE

- (1) By the note no. 109248/03.11.2005, registered at the Competition Council no. RS-AS 102/09.11.2005, the Ministry of Public Finance notified, based on art. 6 from the *Law no. 143/1999 regarding state aid, republished*, the financial support for the „County Company APA SERV SA Piatra-Neamt” (hereafter APA SERV).
- (2) By the notes DAAS/1341/17.11.2005 and DAAS/1387/30.11.2005, additional information was requested, based on art. 6 para. (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. DAAS/1364/24.11.2005, DAAS/1377/28.11.2005, DAAS/1431/15.12.2005, DAAS/1458/27.12.2005 and DAAS/31/16.01.2006.
- (3) The notification became effective as of the date when the information was accurate and complete, namely on 16.01.2006.

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 APA SERV, under the authority of Neamt County Council.
- (5) APA SERV was established according to the provisions of *Law no. 326/2001 on the public services of country management*, of the *G.D. no. 32/2002 on the public services of water management and sewerage* and by the decisions of five shareholders – administrative-territorial authorities, as follows: Neamt County Council, Piatra- Neamt County Local Council, the Local Council of Alexandru cel Bun Village, the Local Council of Raznov Village and the Local Council of Savinesti Village, 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) APA SERV has its social and administrative headquarters in the Piatra – Neamt County, no. 20 Lt. Draghescu Str., and was registered at the Registry of Commerce under no. J 27/499/2003, and Fiscal registration code no. 15346437.¹
- (7) Presently, APA SERV's equity amounts RON 9,528,770² comprising 952,877 shares, each having a nominal value of 10 RON/share, owned as follows:

Table no.1 - APA SERV's shareholders structure

SHAREHOLDERS	Equity holdings	
	Number of shares	Percentage in the equity (%)
Neamt County Council	859,071	90.1554
Piatra- Neamt County Local Council	18,932	1.9868
Local Council of Alexandru cel Bun Village	55,032	5.7754
Local Council of Savinesti Village	11,763	1.2345
Local Council of Raznov Village	8,079	0.8479
Total	952,877	100.00

Source: Notification form

- (8) The economic-financial results obtained by APA SERV during 2003-2005 are presented in the Table no.2.

Table no.2 - APA SERV's economic –financial results

		-RON-		
	INDICATOR	2003	2004	30.06.2005
1.	Net turnover	6,206,731.6	11,174,147.5	5,971,926.5
2.	Net profit	78,278.3	142,226.8	303,047.0

Source: Notification form

¹ APA SERV has been registered at the Trade Register Office, in 2003, with an initial equity of ROL 25,000,000 (RON 2,500) established by the cash contribution of the shareholders, as follows: the Neamt Local Council – ROL 22,000,000, the Piatra- Neamt County Local Council– ROL 1,400,000, the Local Council of Alexandru cel Bun Village– ROL 600,000, the Local Council of Raznov Village – ROL 400,000 and the Local Council of Savinesti Village– ROL 600,000.

² The increasings in the equity were due to the contribution in kind from the shareholders, with goods belonging to their private domain.

From the data in the above presented table it results that, in each year during 2003-2005, the company registers, on its entire activity, a positive financial result.

- (9) According to its setting up deed, the main activity of APA SERV 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.³
- (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) [...]*
- (12) APA SERV SA'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) [...]*

³ The ancillary activities carried out by APA SERV consist in architectural, engineering activities and consultancy services for them, intermediary services related to the commerce with industrial equipments, production of equipments and measurement, checking and control instruments etc.

* confidential data
* confidential data

- (15) The weight of the public services of drinking water supply and sewerage for the population and public institutions represents 98.6% of the total public services discharged by APA SERV.

2.2. The sector affected by the financial support granted to the APA SERV

- (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) [...]*
- (18) [...]*

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 APA SERV. The value of the loan is of Euro 7,845,738 to be reimbursed in 2010-2028, with an interest rate of 4.5% per annum.
- (20) The sub-loaned funds are destined to co-finance the project **„Improvement of drinking water supply, sewerage systems and the station for the treatment of waste water in the city of Piatra - Neamt”** (hereafter named the Project), for which APA SERV benefits from non-reimbursable financial assistance amounting Euro 21,159,963 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 „Improvement of drinking water supply, sewerage systems and the station for the treatment of waste water in the city of Piatra – Neamt, Romania” signed in Brussels on 20th December 2002 and in Bucharest on 31st March 2003, ratified by Law no. 418/2003*.
- (21) The legal basis for granting the notified financial support is the *Law no. 56/17.03.2005 regarding the approval of the Financing Contract between Romania and the European Investment Bank for the Project on the county infrastructure in the field of water supply, the second stage, signed in Bucharest on 15th March, 2004 and in Luxembourg on 19th March 2004*.
- (22) At the same time, in accordance with the *Decision of the County Council no. 20/30.04.2004*, the sums representing the tax on profit, dividends and the monthly royalties that APA SERV owns to the county authority's budget 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 Euro 12,468,354, as follows:
- royalties: Euro 3,768,132;

* confidential data
* confidential data

- dividends : Euro 5,802,901;
- tax on profit: Euro 2,897,321.

2.4. Description of the Project

(23) The public water and sewerage infrastructure in the Piatra – Neamt City and the annex localities is old and obsolete, it was consequently identified the necessity to realize investments to rehabilitate, develop and modernize it. Due to the fact that APA SERV is entrusted with the discharge of public services of water supply and sewerage in the Piatra – Neamt, the obligation to realize the Project belongs to this undertaking.

(24) [...]*

(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 the Piatra- Neamt 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 A component encloses the following:

- Rehabilitation and extension of the drinking water supply network

Rehabilitation: the present water supply system is of approx. 160 km, 95 % from the network is of steel. More than 30 % from the steel pipes are over 30 years old and are in an advanced corrosion estate. Approx. 9 km of corroded steel pipes of different diameters shall be replaced with pipes from high density polyethylene. The rehabilitation also includes the replacement of the valves, the improvement of the conexions and the rehabilitation of the reservoirs and of 5 pumping stations. Within this component, it shall also be acquired a GIS system and equipments for detecting the losses. These equipments will allow to the company to identify and repair more quickly the damages in the delivery network.

Extending: By the extension of the water network with approx. 8 km it shall be ensured the town water supply from 97 % to 100 %. To the town network will be connected other 1,350 houses. The extension of the delivery network from Piatra Neamț shall be made in the districts: Batca Doamnei, Doamna, Dărmănești and Fermelor.

- Ending the metering

The objective is to ensure the accomplishment of the basic metering of 100% (namely for each invoiced client) and an adequate metering of the network which would allow the losses' efficient control.

Within this component:

- 33 electro- magnetique flow meters shall be fitted in the delivery network;
- approx. 2,400 meters shall be fitted and other approx. 1,300 meters shall be repaired;
- equipments for checking and calibrating the water meters shall be acquired;

- Rehabilitation of the sea inlet from Vaduri and treating the water at the station from Batca Doamnei

* confidential data

One of the water sources for Piatra Neamț is the field with underground water wells from Vaduri. The main problems related to the water sources are the high energy consumption of the old pumps, which work with low efficiency, and the absence of any monitoring and automatization equipment. In order to increase the efficiency for the wells for water extraction, it is also proposed to clean 22 wells and modernizing the equipments for water extracting, namely the fitting of new pumps and a SCADA system.

As far as the other water source is concerned, namely the surface water from the Batca Doamnei reservoir, in order to ensure its compliance with the Directive on drinking water no. 98/83/CE, the old dosage system for aluminium sulphate from the water treatment station shall be replaced. Furthermore, the facilities and the equipments from the laboratory from the water treatment station shall be extended and modernized.

(28) The B component encloses the following workings:

- Extending and rehabilitation of the sewerage network

The sewerage system from Piatra Neamț is made in divisor system: there is a network for the pre-purified house effluents and industrial used waters and a network for the pluvial water. The sewerage network from Piatra Neamț serves 8 from the 15 areas (districts and the surrounding localities of the city), being connected approx. 65 % of the population. The present sewerage network has a length of approx. 61 km. Within this component are enclosed the following:

- approx. 6 km from the sewerage network shall be replaced. These are the sections most damaged by blockings;
- the extension with approx. 42 km of the network shall be made in order to serve also the Piatra Neamț population not connected yet;
- two pumping stations for sewerage shall be rehabilitated and other 6 new ones shall be build up;
- the maintenance equipments, namely a movable unit for cleaning the sewerage, including CCTV video equipments and a movable equipment for evacuating the mud, shall be acquired for increasing the maintenance efficiency.

- Rehabilitating the station for treating the waist waters (SEAU)

The rehabilitated station for treating the waist water will allow the treatment of the supplementary flow of waist water incurred by the extension of the sewerage network. The rehabilitated station for treating the waist water shall meet the standards imposed by the Directive on treating the town used waters. The station may be extended so that it meets the requirements for discharging in sensitive waters - in the present area.

(29) The C component encloses the following:

- technical assistance for the acquisitions and for the Project's implementing, preparing the bidding documents, assistance with improvements in the company's financial management and initiating a program for improving the operational proficiency;
- supervising during the implementing;
- ensuring the publicity for the Project.

(30) [...]*

* confidential data

Table no.3 – *Financing sources, value and deadlines to finalize investment objectives included in the Project [...]**

Source: The Financing Memorandum and supplementary information

3. ASSESMENT OF THE MEASURE FROM THE STATE

- (31) 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

- (32) The object of the present decision is the financial support under the form of sub-loan granted to APA SERV by the Ministry of Public Finances and under the form of facilities granted by the County Council.(see para. 22) 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

- (33) Analyzing the overall economic and financial position of APA SERV it can be concluded that the company is not in difficulty. It results from the information sent by the beneficiary APA SERV 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.
- (34) 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.
- (35) Due to the fact that a commercial bank would have granted APA SERV a similar loan, in the market conditions, with an annual interest rate of 8.50%, the Competition Council considers that this rate can be taken as reference when calculating the financial support under the form of loan granted in preferential conditions.
- (36) 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: EUR 4,711,610.8, the equivalent of RON 17,139,427.⁴
- (37) The financial support to be granted to APA SERV by the Neamt County Council as exemption from the payment of the royalty, the tax on profit and the dividends owed during the period of the credit amounts Euro 12,468,354, the equivalent of RON 45,356,131.

* confidential data

⁴ In this calculation was used the BNR exchange rate on 09.12.2005, namely 1 Euro =3.6377 RON.

- (38) The total amount of the financial support to be granted to APA SERV for the Project is of RON 62,495,558.

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

- (39) 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*.
- (40) APA SERV is located in the 1 North –East development region of Romania. As stated under par. (8) of this Decision, APA SERV is not a company in difficulty, thus being eligible for regional aid in accordance with Art. 1 (4) of the *Regulation on regional aid*.
- (41) 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.
- (42) The financial support is granted individually to APA SERV 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.
- (43) 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.
- (44) 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 Piatra- Neamt County and the annex localities. The maintenance of such a system has to be 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.
- (45) 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 APA SERV, but part of the water and sewage public infrastructure of the Piatra- Neamt County, which is property of the Romanian state, namely public property of the Neamt County Council (*Law 213/1998 on public property and legal status*).
- (46) 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:

- (47) 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, APA SERV having no contribution from its own sources to the financing of the eligible costs (i.e. own sources not touched by state support).
- (48) 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.
- (49) Vis-à-vis the above arguments, the Competition Council concludes that the criteria to authorize a regional aid for investments are not met cumulatively.
- (50) Since the services of water and sewerage supply, performed by APA SERV, 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

- (51) 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):

- (52) APA SERV is entrusted to deliver public services of water supply and sewage by the license approved by A.N.R.S.C. Order no. 604/28.09.2005. 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.
- (53) According to the *Law on town management no. 326/2001*, the water supply and sewage services are public utility services.
- (54) 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.
- (55) 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 Neamt through the Decision of the County Council no. 20/30.04.2004.
- (56) Regarding the above presented facts, we underline that APA SERV 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 Piatra-Neamt as well as collection, transport and treatment of domestic and meteoric waste water of Piatra-Neamt and the annex localities. 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 APA SERV 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):

- (57) 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.
- (58) 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.

- (59) 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.
- (60) 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.
- (61) 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.
- (62) 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.

(63) Before the beginning of every financial exercise APA SERV is justifying its revenues and expenditures budget, which is subject to the analysis and approval of the Neamt County 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):

(64) 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.

(65) As pointed in para. (38) the financial support granted to APA SERV is in total amount of RON 62,495,558.

(66) 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 27% from the eligible costs of the Project (minim 25% being an indispensable condition for obtaining the non-reimbursable financing from ISPA Program).

(67) Analyzing the economic and financial position of APA SERV 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 4.5%) smaller than the interest that the company could obtain for a credit contracted from a commercial bank (8.5%).

(68) 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) APA SERV has to adjust its combine tariff for water/wastewater with 60% compared with the initial tariff. At the same time, annually the tariff may also be increased due to the inflation. 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 Piatra- Neamt County consumers' affordability.

- (69) In the hypothesis APA SERV 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. 4.

Table no. 4 – The supplementary costs related to the performance of the public service in the hypothesis of co financing the Project from its own sources, during 2005-2028

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/mc		RON/mc		Thousand RON/mc		thousand 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	1.1200	0.7900	1.1806	0.9985	8,400	7,200	509,092.84	1,500,855.24	2,009,948.08
2006 (estimated)	1.2320	0.8690	1.3203	1.1416	8,400	7,200	741,424.69	1,962,873.90	2,704,298.59
2007 (estimated)	1.2936	0.9125	1.4044	1.2397	8,400	7,200	930,504.99	2,356,279.85	3,286,784.84
2008 (estimated)	1.2936	0.9125	1.4044	1.2397	8,400	7,200	930,504.99	2,356,279.85	3,286,784.84
2009 (estimated)	1.2936	0.9100	1.4044	1.2371	8,400	7,200	930,504.99	2,355,009.77	3,285,514.76
2010 (estimated)	1.2936	0.9100	1.4019	1.2307	8,400	7,200	910,126.09	2,308,699.88	3,218,825.97
2011 (estimated)	1.2936	0.9100	1.3995	1.2242	8,400	7,200	889,747.18	2,262,390.00	3,152,137.18
2012 (estimated)	1.2936	0.9100	1.3971	1.2178	8,400	7,200	869,368.28	2,216,080.11	3,085,448.39
2013 (estimated)	1.2936	0.9100	1.3947	1.2114	8,400	7,200	848,989.38	2,169,770.23	3,018,759.60
2014 (estimated)	1.2936	0.9100	1.3922	1.2049	8,400	7,200	828,610.47	2,123,460.34	2,952,070.81
2015 (estimated)	1.2936	0.9100	1.3898	1.1985	8,400	7,200	808,231.57	2,077,150.46	2,885,382.02
2016 (estimated)	1.2936	0.9100	1.3874	1.1921	8,400	7,200	787,852.66	2,030,840.57	2,818,693.23
2017 (estimated)	1.2936	0.9100	1.3850	1.1856	8,400	7,200	767,473.76	1,984,530.69	2,752,004.45
2018 (estimated)	1.2936	0.9100	1.3825	1.1792	8,400	7,200	747,094.86	1,938,220.80	2,685,315.66
2019 (estimated)	1.2936	0.9100	1.3801	1.1728	8,400	7,200	726,715.95	1,891,910.92	2,618,626.87

⁵ The state aid consists in the sub-loan granted by MPF and the facilities granted by the County 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 7,845,738 and reimburse it totally from its own sources, without the support of the County Council.

2020 (estimated)	1.2936	0.9100	1.3777	1.1663	8,400	7,200	706,337.05	1,845,601.03	2,551,938.08
2021 (estimated)	1.2936	0.9100	1.3753	1.1599	8,400	7,200	685,958.14	1,799,291.14	2,485,249.29
2022 (estimated)	1.2936	0.9100	1.3728	1.1535	8,400	7,200	665,579.24	1,752,981.26	2,418,560.50
2023 (estimated)	1.2936	0.9100	1.3704	1.1470	8,400	7,200	645,200.34	1,706,671.37	2,351,871.71
2024 (estimated)	1.29361	0.9100	1.3680	1.1406	8,400	7,200	624,821.43	1,660,361.49	2,285,182.92
2025 (estimated)	1.2936	0.9100	1.3656	1.1342	8,400	7,200	604,442.53	1,614,051.60	2,218,494.13
2026 (estimated)	1.2936	0.9100	1.3631	1.1277	8,400	7,200	584,063.62	1,567,741.72	2,151,805.34
2027 (estimated)	1.2936	0.9100	1.3607	1.1213	8,400	7,200	563,684.72	1,521,431.83	2,085,116.55
2028 (estimated)	1.2936	0.9100	1.3583	1.1149	8,400	7,200	543,312.00	1,475,136.00	2,018,448.00
TOTAL							17,849,641.76	46,477,620.05	64,327,261.81

Source: Supplementary information

From the data presented above, the financing of the Project from APA SERV's own resources would lead to supplementary costs for the public services of drinking water and sewerage of RON 64,327,262 which would reflect in a real tariff care increased with approx. 20% in comparison with the increases provisioned by the Financing Memorandum. Taking into account the facts presented at paragraph (68), this tariff increase would have exceeded the consumers' possibility of bearing it.

(70) 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 64,327,262 and of the financial support under the form of the sub-loan granted by the Ministry of Public Finances and of the exemption from the payment of royalties, tax on profit and the dividends owed to the County Council in total amount of RON 62,495,558, it results that these are merely a compensation granted to APA SERV 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, APA SERV 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):

(71) APA SERV was not entrusted with the service of general economic interest to supply drinking water and sewage following a public tender procedure.

(72) The public service to supply drinking water and sewage was entrusted to APA SERV 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.

(73) 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 APA SERV 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.

(74) The value of the state aid granted to APA SERV is of RON 62,495,558.

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

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

(76) 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

(77) 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.

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.

- (78) As discussed under point 3.4.2 above, APA SERV is exercising a service of general economic essential for the population, institutions and undertakings and this obligation is clearly defined by license.
- (79) APA SERV 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 APA SERV has been officially entrusted with the public service that it discharges.
- (80) 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 APA SERV receives state aid. The compensation granted to APA SERV 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.
- (81) Therefore, one can conclude that the state aid granted to APA SERV 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 Piatra – Neamt County and the annex localities.
- (82) By implementing this Project it is aimed the significant improvement of the performance indicators of the public services of water and sewage supply in Piatra-Neamt, as follows:
- the functioning of SEAU shall fulfil the standards imposed by the Directive on waste water 91/271/EC;
 - supply of drinking water supply shall fulfil the standards provisioned in the Directive on drinking water no. 98/83/EC;
 - a higher efficiency for the water consumption by reducing the losses and by an efficient management of the water demand;
 - decreasing the population's risk to get ill by extending the collection of the used waters from the entire population;
 - protecting the underground waters;
 - an economy of the energy consumption when operating the water and waste water infrastructure;
 - improving the quality of the performed services and the APA SERV's exploiting performances.

Table no.5 - Performance indicators of the water supply and sewerage public service within the Piatra-Neamt County

Performance indicators	Before ISPA	After ISPA
<i>Drinking water</i>		
According to the Directive on water no. 98/83/EC	It is not in accordance with the parameters	Totally in accordance
Energy consumption % for the present situation of the assets	100 %	80 %

Drinking water supply	97 %	100 %
Metering /ensuring basic metering for the population	66 %	100 %
Losses in the delivery network	37 %	20-24 %
<i>Collecting and treating waste water</i>		
Connecting the population to the sewerage	65 %	100 %
Managing the mud	no	yes
Environmental management plan	no	yes
SEAU should be in accordance with the Directive on town waste water no. 91/271/EC	It is not in accordance	In accordance (secondary treatment)
SEAU – energy consumption % for the present situation of the assets	100 %	70%

Source: Financing Memorandum

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

(83) It needs to be noted that the activity of the company is restricted to a limited geographical area represented by the area of the Piatra- Neamt County and the annex localities. APA SERV 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

(84) The state aid granted to APA SERV 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 the Piatra- Neamt County.

(85) Thus, the two conditions provided at point (76), 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

(86) 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. (and to ensure no cross-subsidising of it's commercial activities)

(87) 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.

- (88) 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 APA SERV; thus, it does not distort competition in such a manner to impede on the common interest.
- (89) The notified state aid amounting RON 62,495,558, is compatible with a normal competitive environment.

DECIDES

- Art.1.** The financial support granted to County Company APA SERV SA Piatra-Neamt for financing the project „Improvement of drinking water supply, sewerage systems and the station for the treatment of waste water in the city of Piatra – Neamt, 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 APA SERV, in amount of RON 62,495,558, 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 APA SERV, 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;
 - County Company APA SERV SA Piatra-Neamt, Str. Lt. Draghinescu nr. 20, cod postal 610125, Piatra-Neamt, Neamt County.

**PRESIDENT
MIHAI BERINDE**