

**DECISION NO. 17**  
**as of 03.02.2006**

**regarding the contracting of an external loan by the Ministry of Public Finance, for the benefit of the Regie Autonome AQUABIS RA Bistrita-Nasaud, in order to co-finance the Project „Rehabilitation and extension of the water supply system and waste water treatment network in the city of Bistrita”**

**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 the Law no.20/1993, published in the Official Gazette, Part I, no. 73/12.04.1993,

Taking into consideration the provisions of the Competition Law no. 21/1996, republished in the Official Gazette, Part I, no. 744/16.08.2005,

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

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. 109209/27.10.2005, filed at the Competition Council no. RS-AS 98/31.10.2005, the Ministry of Public Finance notified, based on art. 15 of Law no. 143/1999 on State aid, republished, the financial support for the County Water Regie Autonome AQUABIS RA Bistrita-Nasaud.
- (2) By notes no. DAAS/1341/17.11.2005, DAAS/1392/30.11.2005, CC/2866/20.12.2005, DAAS/20/12.01.2006 and DAAS/67/23.01.2006, additional information were requested, based on art. 15 (4) of Law no. 143/1999 on State aid, republished. The Ministry of Public Finance transmitted the reply to the additional information requested by the addresses registered at the Competition Council under

no. DAAS/1408/05.12.2005, DAAS/1449/21.12.2005, DAAS/1457/27.12.2005, DAAS/34/16.01.2006, DAAS/76/24.01.2006 and DAAS/122/30.01.2006.

- (3) The notification became effective as of the date when the information was accurate and complete, respectively on 30.01.2006.

## **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 the County Water Autonomous Regie AQUABIS RA Bistrita-Nasaud (hereafter called Aquabis), under the authority of the Bistrita-Nasaud County Council.
- (5) Aquabis was established according to the provisions of Law no. 15/1990, GD no. 1330/1990 and LCD no. 70/21.03.1995, 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) Aquabis 's patrimony amounts RON 35,503,274.
- (7) The company is headquartered in the city of Bistrita, 1 Parcului Str., Bistrita-Nasaud county and registered with the Trade Register under no. J 06/185/1995, and unique registration code no. 566787, fiscal attribute R.
- (8) The economic and financial results obtained by Aquabis during 2003-2005 are presented in Table no.1.

*Table no.1 - Economic and financial results of Aquabis*

				-RON-
No.	INDICATOR	2003	2004	30.06.2005
1.	Net turnover	9,900,864	10,225,215.0	5,443,356.6
2.	Net profit	1,399,976.4	1,424,980.7	256,042.3

*Source: Notification form*

Data in Table no. 1 show that in each year of the 2003-2005 period the company had positive financial results for its entire activity.

- (9) According to its setting up deed, the main activity of Aquabis is the discharge of the following services of public town management: the sourcing, treatment and distribution of drinking water and the collection, transport and treatment of waste water, CAEN 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 entirety of 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.<sup>1</sup>

- (10) By license granted by the National Agency of Regulation in the field of Services of Town Management (hereinafter called ANRSC), the company is entrusted with the discharge of public services of water supply and sewage.
- (11) Aquabis directly administers and operates the public systems for the supply of drinking water and sewerage in the city of Bistrita-Nasaud, based on the Bistrita-Nasaud Local Council Decisions no. 63/2002, 56/2003, 64/2003, 30/2004, 67/2004, 55/2005, 37/2005, 36/2005.
- (12) The obligations of Aquabis, as a provider of public services of town management to the consumers 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 96.5% of the total activity carried out by Aquabis. Given the fact that there is only one sewerage network in the city of Bistrita-Nasaud, 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 Aquabis. 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.

## **2.2. The sector affected by the financial support granted to the Regie**

---

<sup>1</sup> The secondary activities carried out by Aquabis consist in design services and activity-specific services (repairs, drainage of canals, checking measurement equipment etc.).

- (15) 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.
- (16) 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 areal is represented by a part of the Bistrita Nasaud county territory (Bistrita city and 21 nearby rural settlements). I.e. prices and tariffs of the services are regulated and are not determined by supply and demand but approved by the local public administration – the County Council of Bistrita-Nasaud - and adjusted and agreed by ANRSC; 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.
- (17) Aquabis is the only provider of public services for the supply of drinking water and sewerage in the area it discharges the service.

### **2.3. Ways of granting the financial support**

- (18) The Ministry of Public Finance shall contract a direct loan from the European Investment Bank (hereinafter EIB), which it shall sub-loan, under the same terms, to Aquabis, in order to co-finance the Project „Rehabilitation and extension of the water supply and sewerage system in the area of the city of Bistrita” (hereinafter Project). The value of the credit is EUR 5,625,000 to be reimbursed in 25 years, with a grace period of 6 years, at an interest rate of approx. 3.85%.
- (19) The sub-loaned funds are earmarked to co-finance the Project, for which Aquabis benefits non reimbursable financial assistance in value of EUR 22,500,000 through the Instrument for Structural Policies for Pre-Accession. The terms for realising the Project, it's financing and implementation modalities are regulated by the *Financing Memorandum* agreed between the *Government of Romania and the European Commission, regarding the non-reimbursable financial assistance granted for the measure „Improvement of water supply systems, collection and treatment of waste water in the county of Bistrita-Nasaud, Romania”*.
- (20) The legal basis for granting the notified financial support is *GD no. 551/2005 for approving the technical-economic indicators of the investment objective included in the ISPA programme „Rehabilitation and extension of the water supply and sewerage system in the area of the city of Bistrita”, Bistrita-Nasaud county*.
- (21) According to LCD no. 73/2005 for setting up the guarantee fund for the ISPA programme, over the duration of the ISPA project, the company shall pay the profit tax and the share of net profits due to the County Council into a special fund for maintaining and development of the Project; the sums in this fund shall be granted as subsidies to Aquabis in order to pay the obligations corresponding to the sub-loan. According to supplementary information submitted to the Competition Council the total estimate of these amounts is of EURO 8,097,279, as follows:
- a. dividends: EURO 5,516,367;
  - b. profit tax: EURO 2,580,912.

- (22) Also, the local authorities contribute to the financing of the Project with budgetary allocations in amount of EURO 231,274.

## **2.4. Description of the Project**

- (23) Considering the age and the considerable worn out ratio of the public water and sewerage infrastructure in the city of Bistrita as well as the fact that not all neighbourhoods are connected to the network, the necessity to realize investments to rehabilitate, develop and modernize it has been identified. Due to the fact that Aquabis is entrusted with the discharge of public services of water supply and sewerage in the city of Bistrita, the obligation to implement the Project belongs to this undertaking.

- (24) The value of the eligible costs of the Project is of EUR 22,500,000, financed as follows:

- ISPA assistance - EUR 16,875,000 (75% of the eligible costs of the Project);
- Co-financing of the ISPA assistance beneficiary (25% of the eligible costs of the Project) is foreseen to be ensured by sub-loan, in amount of EUR 5,625,000.

This amount will be supplemented with the amount of non-eligible expenses of the Project of EURO 281,800.

- (25) The Project consists in investments regarding the extension and improvement of systems for the treatment of drinking water, the collection of waste water and of the treatment station in the City of Bistrita. The financed components of the Project are the following:

- A. Rehabilitation of the water treatment station Bistrita-Bargaului and treatment of the sludge resulting from the technological process;
- B. Rehabilitation and extension of the water supply and sewerage networks;
- C. Technical assistance, supervision during implementation and publicity.

- (26) The A component contains the following investment objectives:

- placing of a 1.5 km-long adduction pipe;
- rehabilitation of four lamellar decantors;
- rehabilitation of filters and equipment with control panels;
- improvement of aluminium sulphate and lime dosage equipment;
- construction of a storage basin for water resulting from washing the filters;
- construction of a dehydration installation for sludge resulting from the technological process;
- construction of a sludge storage basin.

- (27) The B component contains the following investment objectives:

- rehabilitation of approx. 10 km of the drinking water distribution network by replacing the biggest loss-making parts with new pipes;
- extension of approx. 24 km of drinking water distribution network in the areas that do not currently benefit from the supply of drinking water;
- placing a pumping station and 200 c.m. reservoir at Prundu Bargaului;

- placing two 500 c.m. reservoirs, a chlorinating station, a chemical laboratory and a service workshop at Josenii Bargaului;
- extension of the sewerage network by approx. 144 km;
- construction of two main collectors, in unitary system, for used household water, in the Viisoara neighbourhood;
- placing six pumping stations in the Ghinda, Sigmir and Prundu Bargaului neighbourhoods.

(28) The C component includes the following activities:

- technical assistance for support of the procurement process and assistance in implementing the project, preparing the tender documents and other;
- supervision during implementation;
- publicity for the Project.

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

Table no. 2 - *Deadlines and value of the components financed within the Project*

No.	Component	Value (Euro)	Deadline
1.	Rehabilitation of the drinking water treatment station Bistrita-Bargaului and treatment of the sludge resulting from the technological process	733,600	December 2009
2.	Rehabilitation and extension of the water supply and sewerage networks	20,066,400	December 2009
3.	Technical assistance, supervision during implementation and publicity	1,700,000	June 2006

Source: *Financing memorandum*

### 3. ASSESSEMENT OF THE MEASURES

(30) In order to ascertain the applicability of the rules on State aid, the Competition Council has to analyse if the measures 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 by the Ministry of Public Finance and under the form of facilities and budgetary allocations granted by local authorities (see para.21-22). The funds are used for financing an investment objective regarding the infrastructure of water and sewerage of the city.

#### 3.2. Assessment of the aid

(32) Analyzing the overall economic and financial position of Aquabis it can be concluded that the company is not in difficulty. It results from the information sent by the beneficiary that Aquabis 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 sub-loan can be calculated 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 Aquabis a similar loan, in the market conditions, with an annual interest rate of 6.146%, 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 under the form of preferential loan is equal to the discounted difference between the market interest rate and the interest rate to the sub-loan, respectively: EUR 1,690,758, the equivalent of RON 6,150,470.4.<sup>2</sup>
- (36) The financial support to be granted to Aquabis by the local authorities under the form of facilities and budgetary allocations is in amount of EURO 8,328,553, the equivalent of RON 30,296,777.
- (37) The total amount of the financial support to be granted to Aquabis to carry out the Project is of RON 36,447,247.4.

### **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 aid under Art. 2 and Art. 23 of *Law 143/1999, republished*, and the *Regulation on Regional Aid*.
- (39) Aquabis is located in the 6 North-West development region in Romania. As stated under par. (8) of this decision, Aquabis 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 aid 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 Aquabis in view 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 must be underlined that the State did not merely pursue a specific or sectoral policy in granting the aid. Nor did it 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

---

<sup>2</sup> The NBR exchange rate of 09.12.2005, respectively 1 Euro = RON 3.6377 was used.

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. 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 Bistrita. The management 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.

- (43) 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, Aquabis, but part of the water and sewerage public infrastructure of the city of Bistrita, which is property of the Romanian state, namely public property of the County Council of Bistrita-Nasaud (*Law 213/1998 on public property and legal status*).
- (44) Leaving these general considerations aside, the Competition Council concludes the following concerning the compatibility of the measure in the context of the *Regulation on Regional Aid*:
- (45) 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, since Aquabis has not made any contribution from own sources to financing the eligible costs (own sources unaffected by State support).
- (46) 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.
- (47) Vis-à-vis the above arguments, the Competition Council concludes that the criteria to authorize a regional aid for investments are not met cumulatively.
- (48) Since the services provided by Aquabis has 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 considerations**

- (49) The financial support granted to a company entrusted with the obligation to deliver 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):**

- (50) Aquabis is entrusted to deliver public services of water supply and sewerage by the license approved by ANRSC Order no. 9/21.12.2004 amended by ANRSC Order no. 112/18.02.2005. 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 sewerage services, ensuring access to networks for new customers, equal treatment of 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.
- (51) According to the *Law on town management services no. 326/2001*, the water supply and sewerage services are public utility services.
- (52) 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.

- (53) 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 company by the County Council Decisions.
- (54) Regarding the above presented facts, we underline that Aquabis is under the obligation to ensure the effective functioning of services relating to the transport, distribution and supply of drinking water that are essential for the population, institutions and undertakings as well as collection, transport and treatment of domestic and meteoric waste water. It is furthermore required to provide these services at a regulated price that is intended to ensure the affordability for the consumer. Consequently, one can conclude that Aquabis 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):**

- (55) 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.
- (56) According to the provisions of GO no. 32/2002 on the management and functioning of public services of water supply and sewerage, 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.
- (57) The prices and tariffs for public services of water supply and sewerage are justified in advance according to transparent parameters such as: production and operating costs, repairs 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 ensure the environment protection, to encourage capital investments and to be correlated with the users' affordability degree.
- (58) The operators which demand the establishment, adjustment or amendment of prices and tariffs for water supply and sewerage have the obligation to transmit ANRSC 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 fiches of requested prices and tariffs;

- other data and information necessary for the justification of the proposed prices and tariffs.

(59) 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.

(60) Starting from this 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.

(61) Before the beginning of every financial exercise, Aquabis is justifying its revenues and expenditures budget, which is subject to the analysis and approval of the Bistrita-Nasaud 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 are 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):**

- (62) Condition 3.4.1.c) provides that this compensation must not be higher than the necessary to cover the costs incurred through the discharge of the service for general economic interest.
- (63) As pointed in para. (37), the financial support granted to Aquabis is in total amount of RON 36,447,247.4.
- (64) 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 (minim 25% being an indispensable condition for obtaining the non-reimbursable financing from ISPA Program).
- (65) Analyzing the economic and financial position of Aquabis, 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 and is forced to use a loan. Thus, the Ministry of Public Finance sub-loans the funds contracted with the EIB at a lower interest rate (3.85% respectively) than the interest that the company could obtain for a credit contracted from a commercial bank (6.146%).
- (66) According to the feasibility study related to the investment and of the Financing Memorandum, in order to meet the expenses related to the EIB loan (interest, fees, instalments), Aquabis has to adjust its tariff as follows: by 11% in real terms for drinking water supply and sewerage tariffs in 2006, by 7% in 2007, and by 2% in 2008, as compared to the previous year's tariff. 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 Bistrita consumers' affordability.
- (67) In the hypothesis Aquabis 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 2006-2029*

Year	The average cost per unit of the SIEG if receiving State aid <sup>3</sup>	The average cost per unit of the SIEG if financing the Project from its	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
------	---	---	--	--

<sup>3</sup> The state aid consists in the sub-loan granted by MPF and the allocations and facilities granted by local authorities;

		own sources <sup>4</sup>		
	RON/cm	RON/cm	cm	RON
(1)	(2)	(3)	(4)	(5)=[(3)-(2)]*(4)
2005	1.6143455	1.7365022	7,060,000	862,426.3020
2006	1.7791795	1.7814334	6,883,000	15,513.9378
2007	1.9199959	1.9347390	6,814,000	100,459.1427
2008	2.1233687	2.2154851	6,814,000	627,680.8089
2009	2.3677191	2.5348070	6,882,000	1,149,898.9278
2010	2.7103195	2.9037158	6,986,000	1,351,066.5518
2011	2.8164769	3.1512808	7,090,500	2,373,927.4074
2012	2.7806353	3.1005484	7,897,500	2,302,574.5372
2013	2.8779616	3.1834273	7,306,000	2,231,732.0389
2014	2.8631447	3.1559365	7,379,000	2,160,510.6922
2015	2.9097386	3.1900783	7,452,500	2,089,231.2416
2016	2.9489426	3.2170518	7,527,500	2,018,192.0030
2017	2.9869641	3.2431015	7,602,500	1,947,284.5835
2018	3.0136790	3.2579924	7,678,500	1,875,960.4419
2019	3.0415762	3.2743243	7,755,000	1,804,961.1277
2020	3.0703233	3.2916908	7,833,000	1,733,971.2358
2021	3.1005115	3.3107200	7,911,000	1,662,959.8390
2022	3.1004745	3.2977136	8,070,500	1,591,818.1565
2023	3.1325841	3.3191446	8,151,000	1,520,655.0430
2024	3.1660238	3.3420906	8,232,000	1,449,381.4860
2025	3.2001287	3.3659233	8,315,000	1,378,582.5147
2026	3.2357485	3.3914188	8,398,000	1,307,319.5993
2027	3.2726985	3.4184293	8,481,500	1,230,015.7802
2028	3.3106092	3.4466221	8,566,500	1,175,154.9361
2029	3.3497023	3.4761452	8,652,500	1,094,047.1922
<b>TOTAL</b>				<b>37,051,325.5278</b>

Source: Supplementary information

As resulting from the data presented above, the financing of the Project from Aquabis's own resources would lead to supplementary costs for the public services of drinking water and sewerage supply of RON 37,051,325.5; these would be reflected in a tariff increase beyond the consumers' affordability threshold.

- (68) From the comparative assessment of the supplementary costs that the company should bear if financing the project from its own sources, in amount of RON 37,051,325.5 and of the financial support under the sub-loan granted by the Ministry of Public Finances, budgetary allocations and facilities granted by the local authorities, amounting to RON 36,447,247.4, it results that the latter is just a compensation granted to Aquabis for performing the obligation of service of general economic interest of supplying drinking water and sewerage. Without the financial support granted, Aquabis 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 from point 3.4.1. d):

<sup>4</sup> 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 5,625,000 and reimburse it totally from its own sources, without the support of the County Council.

- (69) Aquabis was not entrusted with the service of general economic interest to supply drinking water and sewerage following a public tender procedure.
- (70) The public service to supply drinking water and sewerage was entrusted to Aquabis by license from ANRSC and a comparative analysis of its costs with those of a well-run undertaking providing the same service could not be carried out by the grantor.
- (71) 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 measure of support notified for Aquabis constitutes 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*.
- (72) The value of the state aid granted to Aquabis is RON 36,447,247.4.

**3.4.6. Assessment of the compatibility of the state aid of the Ministry of Public Finance 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 considerations**

- (73) 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). It 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 Treaty<sup>5</sup>. 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.
- (74) 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

---

<sup>5</sup> 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.

interest may constitute state aid compatible with a normal competition environment if the following conditions are cumulatively met:

- (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**

- (75) 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 supply of the respective public service, taking into account the relevant revenues and a reasonable profit resulting from discharging these obligations.
- (76) As discussed under point 3.4.2, Aquabis is exercising a service of general economic essential for the population, institutions and undertakings and this obligation is clearly defined by license.
- (77) Aquabis operates its services based on its ANRSC licence. This licence, together with the relevant legislation, clearly define the public service obligation to be provided by the undertaking. Thus, we may conclude that Aquabis has been officially entrusted with the public service that it discharges.
- (78) 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 to the consumers, prices that could cover the real operating costs. In establishing the prices and tariffs it must be taken into account the consumers' affordability degree. This is the main cause for which Aquabis receives state aid. The compensation granted to Aquabis 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 resources, obtained under normal market terms.
- (79) Therefore, one can conclude that the state aid granted to Aquabis 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 Bistrita.
- (80) By implementing this Project it is aimed the significant improvement of the performance indicators of the public services of water and sewerage supply in Bistrita, as follows:
- alignment to the provisions of the Drinking Water Directive 98/83/EC;
  - extension of the water supply system to the areas that currently use only drinking water from private wells, of inadequate quality;

- stopping the pollution of the Bistrita river;
- eliminating the risks regarding the health of the population living in the area of the Project by extending the sewerage network by 25%;
- reducing water losses by de 7% and cutting un-billed water debits by 7%.

Table no. 4 - Performance indicators of the public water supply and sewerage systems in the city of Bistrita

Performance indicators	Before ISPA	After ISPA
Population connected to the water supply network	66%	87%
Specific water losses	1.6 cm/km water network/hour	1,0 cm/km water network/hour
Total metering level	97%	100%
Compliance with the drinking water quality to the provisions of the Drinking Water Directive 98/83/EC	Non-compliance for several parameters	Total compliance with the Directive
Connected population that benefits from sewerage services/total population	52%	77%

Source: Financing Memorandum

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

- (81) It needs to be noted that the activity of the company is restricted to a limited geographical area represented by the area of the city of Bistrita. Aquabis 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 EU Member States.

### 3.4.6.4 There is no over-compensation

- (82) The state aid granted to Aquabis for financing the Project 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 city of Bistrita.
- (83) Thus, the two conditions provided at point (74), 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

- (84) According to the provisions of art. 20 par. 5 of 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.
- (85) In order to maximize transparency, in the Financing Memorandum of the Project 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 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.

- (86) As shown above, the state aid has been granted for the compensation of a clearly defined general obligation of public services of general economic interest. The State aid measure is proportionate to the net public service costs discharged by Aquabis; thus, it does not distort competition in such a manner to impede on the community interest.
- (87) The state aid notified by the Ministry of Public Finance, in amount of RON 36,447,247.4 is compatible with a normal competitive environment.

## **DECIDES**

- Art.1.** The financial support granted to RAJA Aquabis Bistrita Nasaud for financing the project „Rehabilitation and extension of the water supply and sewerage system in the area of the city of Bistrita” 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 par. 2 (b) corroborated with Art. 23 par. 1 (j) of *Law 143/1999 regarding state aid, republished*, the state aid for RAJA Aquabis Bistrita-Nasaud, in amount of RON 36,447,247.4, 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 on state aid, republished*, the grantor shall annually submit to the Competition Council information regarding the state aid granted to RAJA Aquabis Bistrita-Nasaud, 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:
- The Ministry of Public Finance, 17 Apolodor Str., sector 5, Bucharest;
  - RAJA Aquabis Bistrita-Nasaud, 1 Parcului Str., postal code 420035, Bistrita, Bistrita-Nasaud county.

**PRESIDENT**

**MIHAI BERINDE**