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PLENUM OF THE COMPETITION COUNCIL

**DECISION**

**No. APD – 27  
of 29.06.2017**

**mun. Chișinău**

The Plenum of the Competition Council,

acting on the basis of Art. 41 of the Competition Law No. 183 of 11.07.2012, Parliament's Decision No. 179 from 12.07.2013 regarding the appointment of the members of the Plenum of the Competition Council, as well as the Parliament's Decision No. 220 of 27.09.2013 regarding the appointment of a member of the Plenum of the Competition Council,

analyzing the investigation report on the case initiated by the Plenum of the Competition Council Provision No. 1 of 30.08.2013, the comments made by the parties on the investigation report and the materials collected during the investigation,

**STATED:**

On 30.05.2013, the Competition Council received the complaint from "Bio-Test" LLC, in which were claimed the actions of "Servicii Comunale Florești" JSC regarding the disconnection from the water supply network of the "Bio-Test" LLC medical laboratory, following the refusal to change the water meter.

Through the Provision No. 1 of 30.08.2013 (subsequently amended by the Decision on the amendment of some administrative acts No. APD-13 of 10.04.2014) the Plenum of the Competition Council ordered the initiation of the investigation regarding:

a) the signs of violation of the provisions of Art. 11 par. (2) let. a) of the Competition Law No. 183 of 11.07.2012 regarding the actions of "Servicii Comunale

Florești" JSC to impose the double payment for consumers (when purchasing the water meter and collecting the tariff for the water supply and the sewerage service, which also includes the cost of the water meter) for the installation of the Flodis type water meter.

b) the signs of violation of the provisions of Art. 11 par. (2) let. g) of the Competition Law No. 183 of 11.07.2012 regarding the actions of "Servicii Comunale Florești" JSC to disconnect the "Bio-Test" LLC medical laboratory from the water supply network as a result of the refusal to replace the water meter.

## **I. The parties involved**

**„Bio-Test” LLC<sup>1</sup>** (IDNO 1003600104557) – clinical diagnostic laboratory, which provides medical services to the population of Florești, licensed and accredited in medical field. The laboratory has carried out its activity on C. Porumbescu Street No. 6, ap. 18, Florești city.

**„Servicii Comunale Florești” JSC** (IDNO 1003607001471) – registered on 02.05.2001 in the State Register under the number 150032180, on the basis of joint decision No. 530 from 06.06.2000 of Florești City Council and the Government. , . The undertaking was formed on the basis of the reorganization of the state-owned company, the Production Department "Apă-Canal" from Florești city and the Directorate of production of the Florești communal household in a joint-stock company. The founder of the undertaking is Florești City Council, which has the 100% shareholding. "Servicii Comunale Florești" JSC provides communal services, including water supply in Florești city and Florești district localities.

**Florești City Council** – local public authority of Florești city .

## **II. Relevant market: Relevant product market and relevant geographic market**

### **Relevant product market**

According to Art. 4 of the Competition Law No. 183 from 11.07.2012 (hereinafter the Competition Law) the relevant product market comprises all products considered by the consumer as interchangeable or substitutable, due to use, physical and operational characteristics, prices thereof.

Taking into account that the action filed by "Bio-Test" LLC refers to the public water supply and sewerage service provided by "Servicii Comunale Florești" JSC, the

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<sup>1</sup> According to letter No. 470 of 01.06.2017 from "Servicii Comunale Florești" JSC, dated 07.11.2014 "Bio-Test" SRL no longer activates in Florești city. From 01.12.2014 on the address of C. Porumbescu Street No. 6 ap. 18 activates "Quest" LLC, having the same founder as well as "Bio-Test" LLC - Zgardan Eugenia.

relevant product market for the purpose of the investigated case is defined as the market for the provision of the public water supply and sewerage systems service.

### **Relevant geographic market**

Given the fact that "Servicii Comunale Florești" JSC is a supplier delegated by the Contract for the granting (delegation) of the regional water supply services for Florești district, signed on 03.11.2011, to provide water supply and sewerage services in the beneficiary localities of the Project Agreement of the Program for the Development of Water Supply and Sewerage Companies signed on 20.12.2010, for the purpose of the present investigation the geographic market represents the territory of Florești city, Ghindești city, Ghindești commune, Mărculești city, Marculești village, Izvoare commune, Lunga village, Domulgeni village, Vărvăreuca commune and the Roșietici commune (Cenușa village).

Thus, for the purpose of the investigated case, the relevant market is defined as the market for the provision of the public water supply and sewerage service in Florești city, Ghindești city, Ghindești commune, Mărculești city, Marculești village, Izvoare commune, Lunga village, Domulgeni village, Vărvăreuca commune and the Roșietici commune (Cenușa village).

### **Dominant position**

Art. 11 of the Competition Law No. 183 of 11.07.2012 applies to undertakings that hold a dominant position in one or more relevant markets.

The concept of dominant position is defined in Art. 4 of the Competition Law No. 183 of 11.07.2012 as a position of economic power which an undertaking benefits of, and which allows it to prevent effective competition on the relevant market, giving the possibility to behave independently, to a considerable extent, of its competitors, clients, and finally of its consumers.

At the same time, according to Art. 10 par. (5) of the Competition Law No. 183 of 11.07.2012, the undertakings vested with exclusive rights are deemed to be undertakings with dominant position on the relevant market to which these rights refer.

Considering the fact that under this investigation fall the "Servicii Comunale Florești" JSC, it will be determined whether or not "Servicii Comunale Florești" JSC has a dominant position on the market for the provision of the public water supply and sewerage systems service on the territory of Florești city, Ghindești city, Ghindești commune, Mărculești city, Marculești village, Izvoare commune, Lunga village, Domulgeni village, Vărvăreuca commune and the Roșietici commune (Cenușa village).

By signing on 03.11.2011 the Contract for the granting (delegation) of regional

water supply services for Florești district between the Local Councils of Florești city, Ghindești city, Ghindești commune, Mărculești city, Mărculești village, Izvoare commune, Lunga village, Domulgeni village, Vărvăreuca commune and the Roșietici commune (Cenușa village), Local Councils on the one hand, and "Servicii Comunale Florești" JSC as Operator, on the other hand, the transfer of the exclusive right and the obligation to provide public water and sewerage services in the Area of Services (Florești city, Ghindești city, Ghindești commune, Mărculești city, Mărculești village, Izvoare commune, Lunga village, Domulgeni village, Vărvăreuca commune and the Roșietici commune (Cenușa village)) from the Local Council to the Operator was agreed. Thus, the "Servicii Comunale Florești" JSC, being the only provider of public water supply and sewerage services on the relevant market, holds a dominant position on the market for the provision of public water supply and sewerage services in Florești city and nine beneficiary localities in the framework of the Project Agreement of the Program for the Development of Water Supply and Sewerage Companies, signed on 20.12.2010.

### **Time period under investigation**

According to the information reported in the complaint, the disconnection of "Bio-Test" LLC's medical laboratory by "Servicii Comunale Florești" JSC came as a result of the former's refusal to change the water meter and it took place on 02.04.2013. The laboratory's reconnection, in following after repeated requests from the complainant, was made on 25.06.2013.

Also, the alleged action of "Servicii Comunale Florești" JSC regarding the imposition of double payment (for purchasing the water meter and for charging the water supply and sewerage tariff) for the installation of the TU1 Flodis type water meter took place from the beginning of 2013 until the date of the approval of the Florești City Council Decision No. 04/02 of 17.04.2014, through which "Servicii Comunale Florești" JSC were obliged to initiate the procedure of installation to consumers, for free, the water meters with remote data reading. At the same time, the action regarding the installation of TU1 Flodis water meters was examined, based on the distinct tariff included in the water supply and sewerage tariff approved by the Decision of Florești City Council No. 04/02 of 17.04.2014, this action continuing until now. Thus, the period under review is considered to be the beginning of 2013 - to the present date.

### **III. Established acts and facts**

In its complaint of 30.05.2013, "Bio-Test" LLC claimed the action of "Servicii Comunale Florești" JSC concerning the disconnection from water supply network of its medical laboratory following the refusal to replace the water meter.

In order to prove (sustain) the action, "Bio-Test" LLC claimed the following:

In March 2012, "Servicii Comunale Florești" JSC requested from "Bio-Test" LLC the change of the existing water meters type LXH Nr. 08-011527 Dn-15 and Belassitsa Nr. 0043466 Dn-15 on type TU1 Flodis water meters (this letter has not been preserved).

On March 13, 2013, "Servicii Comunale Florești" JSC sent a repeated letter to "Bio-Test" LLC, in which, it requested the replacement of the old type water meter with the TU1 Flodis type water meter, metrological class C, the price of which is 500 lei, within 7 days from the date of receipt of the given notification. At the same time, the defendant informed "Bio-Test" LLC about the fact that in case of non-fulfillment of the mentioned requirements, "Servicii Comunale Florești" JSC reserves the right to terminate the Contract for the supply of water and wastewater services (Annex 4 to the complaint of 30.05.2013 - the "Servicii Comunale Florești" JSC letter No. 1991, of 13.03.2013).

As a result of the refusal to change the water meter, on 12.04.2013, "Servicii Comunale Florești" JSC disconnected "Bio-Test" LLC from the water supply network because of the failure to meet the deadline for replacement of the water meter (Annex 7 to complaint).

The Competition Council requested from "Servicii Comunale Florești" JSC information about the need to replace the old type water meters with TU1 Flodis type water meters, as well as the legal basis that led to the need to switch to the computerized consumption accounting system of drinking water (letter No. APD - 08 / 143-396 of 07.06.2013).

In this respect, "Servicii Comunale Florești" JSC communicated in letter No. 2311 of 18.06.2013 that the Loan Agreement between the Republic of Moldova and the European Bank for Reconstruction and Development (within the Program for the Development of Water Supply and Sewerage Services) was signed on 16.06.2010 and the agreement was ratified by Law No. 203 of 16.07.2010.

Based on the same Law, on 20.12.2010, the Project Agreement of the Program for the Development of Water Supply and Sewerage Companies (hereinafter Project Agreement) was signed between Florești City Council, ten municipalities of Florești district, "Servicii Comunale Florești" JSC and the European Bank for Reconstruction and Development (hereinafter EBRD).

As part of this Project Agreement, on 03.11.2011, the contract for the delegation of regional water supply services for Florești district (hereinafter Delegation Contract) was signed between Local Councils of Florești city, Ghindești city, Ghindești commune, Mărculești city, Mărculești village, Izvoare commune, Lunga village, Domulgeni village, Vărvăreuca commune and the Roșietici commune

(Cenușa village) Local councils on the one hand, and "Servicii Comunale Florești" JSC on the other hand.

At the same time, a feasibility study on the subject of the investment was carried out by the BDO company, a consultant employed by the EBRD. The BDO company has developed the priority list of investments and the list of basic indicators, which have to be observed by "Servicii Comunale Florești" JSC. According to this list, water meters with remote data reading were purchased through an international tender.

By letter (email) dated 02.07.2013. the defendant submitted to the Competition Council the copies of the Project Agreement, the Delegation Contract, the Business Plan which is a mandatory annex to the Delegation Contract, as well as other information.

Thus, according to the Delegation Contract, a loan from the EBRD was granted to the Florești district in the amount of EUR 2 166 666,67, a grant from the European Investment Bank (hereinafter referred to as the EIB) amounting to EUR 2 166 666,67 and a grant awarded by the Neighborhood Investment Facility (hereinafter NIF) in the amount of EUR 2 166 666,67.

Under the Delegation Contract, "Servicii Comunale Florești" JSC shall extend the provision of water supply and sewerage services at regional level in Ghindești city, Ghindești commune, Mărculești city, Mărculești village, Izvoare commune, Lunga village, Domulgeni village, Vărvăreuca commune and the Roșietici commune (Cenușa village), as well as to reduce the non-invoiced volume of metered water.

At the same time, in the Business Plan, Annex No. 4 to the Delegation Contract is presented the planning of water supply, the investment plan and the planned financing for each locality of Florești district, beneficiaries in the EBRD investment project, as follows:

**Table 1**

**Investments and financing planned in Florești city**

<b>No</b>	<b>The action to be taken</b>	<b>Terms of execution</b>	<b>Responsible</b>	<b>The source of financing</b>	<b>Total Cost (EUR)</b>
1.	Rehabilitation of the adduction networks from each well to the Gura Căinarului basin, including the strict sanitary area at each well – 9550m.	Until the end of 2013	UIPAAC, the Operator, contractors, Eptisa	EBRD, EIB, NIF	380 817,0
2.	Rehabilitation of the adduction networks from Gura Cainarului basin to the basin of Florești	Until the end of 2013	UIPAAC, the Operator, contractors,	EBRD, EIB, NIF	381 279,0

	city, Independenței street, M. Viteazul street and to the basin of District Hospital – 22 500m.		Eptisa		
3.	Rehabilitation of the chlorination station, endowment the station with potable water chlorination equipment.	Until the end of 2013	UIPAAC, the Operator, contractors, Eptisa	EBRD, EIB, NIF	155 978,0
4.	Installation of automation systems: - To probes, - To the chlorination station, - at the pumping station of Florești city, Independenței street, M. Viteazul street.	Until the end of 2013	UIPAAC, the Operator, contractors, Eptisa	EBRD, EIB, NIF	126 515,0
5.	Purchase of electrical type meters MT 173 – T1A, MT 831 – T1A: - 7 pieces.	Until the end of 2013	UIPAAC, the Operator, contractors, Eptisa	EBRD, EIB, NIF	3 699,0
6.	Procurement of Flodis water meters, d=15mm in set with EverBlu Cyble – module, class C: - 4000 pieces.	Until the end of 2012	UIPAAC, the Operator, contractors, Eptisa	EBRD, EIB, NIF	508 372,0
7.	Procurement of special equipment and cars for intervention brigades – 7 pieces.	Until the end of 2013	UIPAAC, the Operator, contractors, Eptisa	EBRD, EIB, NIF	94 742,0
8.	Procurement of equipment and operating programs.	Until the end of 2012	UIPAAC, the Operator, contractors, Eptisa	EBRD, EIB, NIF	44 598,0
	<b>Total</b>				<b>1 696 000,0</b>

Source: Letter (email) from "Servicii Comunale Florești" JSC registered with entry No. 215 of 02.07.2013

Table 2

## Investments and financing planned in Ghindești city

No	The action to be taken	Terms of execution	Responsible	The source of financing	Total Cost (EUR)
1.	Rehabilitation of drinking water distribution networks – 10 000m.	Until the end of 2013	UIPAAC, the Operator, contractors, Eptisa	EBRD, EIB, NIF	504 090,59
2.	Procurement of Flodis type water meters, d=15mm in set with EverBlu Cyble – module, class C: - 801 pieces.	Until the end of 2013	UIPAAC, the Operator, contractors, Eptisa	EBRD, EIB, NIF	104 055,41
<b>Total</b>					<b>608 146,0</b>

Source: Letter (email) from "Servicii Comunale Florești" JSC registered with entry No. 215 of 02.07.2013

Table 3

## Investments and financing planned in Ghindești commune

No	The action to be taken	Terms of execution	Responsible	The source of financing	Total Cost (EUR)
1.	Rehabilitation of drinking water distribution networks – 8000m.	Until the end of 2013	UIPAAC, the Operator, contractors, Eptisa	EBRD, EIB, NIF	372 397,68
2.	Procurement of Flodis type water meters, d=15mm in set with EverBlu Cyble – module, class C: - 1338 pieces.	Until the end of 2013	UIPAAC, the Operator, contractors, Eptisa	EBRD, EIB, NIF	173 856,45
<b>Total</b>					<b>546 254,0</b>

Source: Letter (email) from "Servicii Comunale Florești" JSC registered with entry No. 215 of 02.07.2013

Table 4

## Investments and financing planned in Mărculești city

No	The action to be taken	Terms of execution	Responsible	The source of financing	Total Cost (EUR)
1.	Rehabilitation of drinking water distribution networks – 8500m.	Until the end of 2013	UIPAAC, the Operator, contractors, Eptisa	EBRD, EIB, NIF	443 255,0
2.	Procurement of Flodis type water meters, d=15mm in set with EverBlu Cyble – module, class C - 680 pieces.	Until the end of 2013	UIPAAC, the Operator, contractors, Eptisa	EBRD, EIB, NIF	88 180,0
<b>Total</b>					<b>531 435,0</b>

Source: Letter (email) from "Servicii Comunale Florești" JSC registered with entry No. 215 of 02.07.2013



Table 5

## Investments and financing planned in Mărculești village

No	The action to be taken	Terms of execution	Responsible	The source of financing	Total Cost (EUR)
1.	Rehabilitation of drinking water distribution networks – 6400m.	Until the end of 2013	UIPAAC, the Operator, contractors, Eptisa	EBRD, EIB, NIF	285 637,77
2.	Procurement of Flodis type water meters, d=15mm in set with EverBlu Cyble – module, class C - 306 pieces.	Until the end of 2013	UIPAAC, the Operator, contractors, Eptisa	EBRD, EIB, NIF	39 727,23
<b>Total</b>					<b>325 365,0</b>

Source: Letter (email) from "Servicii Comunale Florești" JSC registered with entry No. 215 of 02.07.2013

Table 6

## Investments and financing planned in Lunga vilage

No	The action to be taken	Terms of execution	Responsible	The source of financing	Total Cost (EUR)
1.	Rehabilitation of drinking water distribution networks – 10 000m.	Until the end of 2013	UIPAAC, the Operator, contractors, Eptisa	EBRD, EIB, NIF	524 773,0
2.	Procurement of Flodis type water meters, d=15mm in set with EverBlu Cyble – module, class C - 828 pieces.	Until the end of 2013	UIPAAC, the Operator, contractors, Eptisa	EBRD, EIB, NIF	107 427,0
<b>Total</b>					<b>632 200,0</b>

Source: Letter (email) from "Servicii Comunale Florești" JSC registered with entry No. 215 of 02.07.2013

Table 7

## Investments and financing planned in Izvoare commune

No	The action to be taken	Terms of execution	Responsible	The source of financing	Total Cost (EUR)
1.	Rehabilitation of drinking water distribution networks – 7000m.	Until the end of 2013	UIPAAC, the Operator, contractors, Eptisa	EBRD, EIB, NIF	293 908,0
2.	Procurement of Flodis type water meters, d=15mm in set with EverBlu Cyble – module, class C - 400 pieces.	Until the end of 2013	UIPAAC, the Operator, contractors, Eptisa	EBRD, EIB, NIF	51 792,0
<b>Total</b>					<b>345 700,0</b>

Source: Letter (email) from "Servicii Comunale Florești" JSC registered with entry No. 215 of 02.07.2013

Table 8

## Investments and financing planned in Cenușa village

No	The action to be taken	Terms of execution	Responsible	The source of financing	Total Cost (EUR)
1.	Rehabilitation of drinking water distribution networks – 9800m.	Until the end of 2013	UIPAAC, the Operator, contractors, Eptisa	EBRD, EIB, NIF	452 777,0
2.	Procurement of Flodis type water meters, d=15mm in set with EverBlu Cyble – module, class C - 367 pieces.	Until the end of 2013	UIPAAC, the Operator, contractors, Eptisa	EBRD, EIB, NIF	47 523,0
<b>Total</b>					<b>500 300,0</b>

Source: Letter (email) from "Servicii Comunale Florești" JSC registered with entry No. 215 of 02.07.2013

Table 9

## Investments and financing planned in Domulgeni village

No	The action to be taken	Terms of execution	Responsible	The source of financing	Total Cost (EUR)
1.	Rehabilitation of drinking water distribution networks – 3000m.	Until the end of 2013	UIPAAC, the Operator, contractors, Eptisa	EBRD, EIB, NIF	366 220,0
2.	Procurement of Flodis type water meters, d=15mm in set with EverBlu Cyble – module, class C - 307 pieces.	Until the end of 2013	UIPAAC, the Operator, contractors, Eptisa	EBRD, EIB, NIF	39 780,0
<b>Total</b>					<b>406 000,0</b>

Source: Letter (email) from "Servicii Comunale Florești" JSC registered with entry No. 215 of 02.07.2013

Table 10

## Investments and financing planned in Vărvăreuca commune

No	The action to be taken	Terms of execution	Responsible	The source of financing	Total Cost (EUR)
1.	Rehabilitation of drinking water distribution networks – 14165m.	Until the end of 2013	UIPAAC, the Operator, contractors, Eptisa	EBRD, EIB, NIF	727 138,0
2.	Procurement of Flodis type water meters, d=15mm in set with EverBlu Cyble – module, class C - 1397 pieces.	Until the end of 2013	UIPAAC, the Operator, contractors, Eptisa	EBRD, EIB, NIF	181 462,0
<b>Total</b>					<b>908 600,0</b>
<b>Total investments</b>					<b>6 500 000,0</b>

Source: Letter (email) from "Servicii Comunale Florești" JSC registered with entry No. 215 of 02.07.2013

Thus, according to the above tables, the investments and planning for Florești city include: rehabilitation of the chlorination station, endowment of the station with potable water chlorination equipment, procurement of equipment and operating programs, special equipment and cars for intervention brigades, procurement of water meters and rehabilitation of water distribution networks.

Investments in other nine localities include two actions, namely the rehabilitation of water distribution networks and the purchase of water meters.

According to the above tables, the source of financing of the actions described is the money provided by the EBRD, the EIB and the NIF.

In order to elucidate the facts regarding the factual situation, the Competition Council requested from the local councils of Florești district (Ghindești city, Ghindești commune, Mărculești city, Mărculești village, Izvoare commune, Lunga village, Domulgeni village, Vărvăreuca commune and the Roșietici commune) information regarding the water and sewerage service in each locality. In this respect, the following systematized information about the amounts collected by the defendant from the final consumers for connection to the water network was presented in the table below.

**Table 11**

**The information submitted by the mayoralties included in the EBRD project**

<b>Nr.</b>	<b>Localities selected and included in the EBRD project</b>	<b>Amount collected from consumers for connection (lei and EUR)</b>
1.	Ghindești city	1 500 – 2 500 lei
2.	Lunga village	2 400 lei
3.	Vărvăreuca commune	2 400 lei
4.	Ghindești commune	700 thousands Euro (EBRD financing)
5.	Roșietici commune	2 010 lei
6.	Mărculești city	2 060,15 lei
7.	Domulgeni village	2 700 lei
8.	Izvoare village	2 060,45 lei
9.	Mărculești village	Aprox. 2 000 lei
10.	Florești city	-

Source: letter No. 542/136 of 09.07.2013 from Ghindești City Hall, letter No. 488 of 08.07.2013 from Lunga village Hall, letter No. 752 from 09.07.2013 from Vărvăreuca commune Hall, letter No. 71 from 10.07.2013 from Ghindești commune Hall, letter No. 514 from 01.10.2013 from the Roșietici commune Hall, letter No. 529 from 09.07.2013 to the Local Council of the Mărculești city, letter No. 474 of 22.07.2013 from the Council of Domulgeni village, letter No. 178 of 06.08.2013 from the Council of Izvoare commune, letter No. 489 of 01.10.2013 from Council of Mărculești village.

According to the information systematized in table 11, it is noted that the amount of money collected by "Servicii Comunale Florești" JSC from consumers for connection to the water supply service within the EBRD investment project, on average, exceeded the amount of 2000 lei.

At the same time, the City Hall of Lunga village, by letter No. 704-02 / 1-11 of 27.09.2013, presented the information notes for 2012 and for 2013 (information included in table 12 and table 13), obtained from the defendant, regarding the amounts of money to be paid by the applicants to connect to the aqueduct.

The same information regarding the estimated costs for the works on connecting to the water supply service approved by "Servicii Comunale Florești" JSC for the 2013 year was presented to the Competition Council by Vărvăreuca commune Hall in letter No. 1030 of 01.10.2013, as well as the Mărculești City Council in letter No. 679 of 07.10.2013, in response to the Competition Council request No. APD-12 / 990-755 of 25.09.2013.

**Table 12**

**The information included in the informative note of "Servicii Comunale Florești" JSC for 2012 presented by Lunga village Hall**

No	Service names	U/m	Quantity	Price / lei	Total (lei)
1.	Technical conditions - Population	Piece	1	23,24	23,24
2.	Technical conditions - Economic agents	Piece	1	27,25	27,25
3.	Connection to the water supply network, mounting of the fountain and installation of the metering group – Population	Connection	1	109,39	109,39
4.	Connection to the water supply network, mounting of the fountain and installation of the metering group - Economic agents	Connection	1	128,89	128,89
5.	Mechanized drilling of the hole for the fountain of the water meter	Hole	1	150,0	150,0
6.	Metering group (class C water meter „Flodis” DN 15-1, reverse-direction flap -1piece, damper valve DN 15-1piece, 2 compression fittings)	Piece	1	716,1	716,1
7.	Fountain for water meter	Piece	1	1302	1302
8.	<b>Total - Population</b>				<b>2 300,73</b>
9.	<b>Total - Economic agents</b>				<b>2 324,24</b>

Source: Letter from Lunga village Hall No. 704-02 / 1-11 of 27.09.2013

**Table 13**

**The information included in the informative note of "Servicii Comunale Florești" JSC for 2013 presented by Lunga village Hall, Vărvăreuca commune Hall and Mărculești Council**

No	Services name	U/m	Quantity	Price / lei	Total (lei)
1.	Elaboration of technical conditions - Population	Piece	1	23,24	23,24
2.	Elaboration of technical conditions - Economic agents	Piece	1	27,25	27,25

3.	Technical conditions - Population	Piece	1	234,21	234,21
4.	Technical conditions - Economic agents	Piece	1	304,47	304,47
5.	Connection to the water supply network, mounting of the fountain and installation of the metering group – Population	Connection	1	109,39	109,39
6.	Connection to the water supply network, mounting of the fountain and installation of the metering group - Economic agents	Connection	1	128,89	128,89
7.	Mechanized drilling of the hole for the fountain of the water meter	Hole	1	100,0	100,0
8.	Metering group (class C water meter „Flodis” DN 15-1, reverse-direction flap – 1 piece, damper valve DN 15 - 1piece, 2 compression fittings)	Piece	1	722,92	722,92
9.	Cămin pentru contor	Piece	1	1204,60	1 204,60
10.	<b>Total – Population - consumers</b>				<b>2 160,15</b>
11.	<b>Total - Population - new consumers</b>				<b>2 371,12</b>
12.	<b>Total - Economic agents - consumers</b>				<b>2 183,66</b>
13.	<b>Total - Economic agents - new consumers</b>				<b>2 460,88</b>

Source: Letter from Lunga village Hall No. 704-02 / 1-11 from 27.09.2013, letter from Vărvăreuca commune Hall No. 1030 from 01.10.2013, letter from Mărculești City Hall nr. 679 of 07.10.2013

In Annex No. 3 to the Business Plan, is presented the Action Plan for the implementation of the objectives set out in the Business Plan.

According to the Objective 6 "Reduction of the non - invoiced water volume by 10% until 2014" of the Action Plan, the implementation of new technologies in measuring the services provided by the Operator by installing 11 540 Class C precision water meters was an action financed from EBRD sources, EIB and NIF. The services related to the elaboration and release of the technical conditions for the connection to the network and the installation of the water meter as well as the connection to the water supply network, the installation of the fountain for the water meter and the installation of the measuring group were expected to be financed from the sources of the defendant.

With regard to this fact, the defendant, by letter No. 2682 of 21.10.2013 stated that for the connection to the water service the undertaking has elaborated the cost calculations of the technical conditions for connection to the new pipeline and installation of the measuring group (table 12, table 13). At the same time, some works, such as the digging of the hole for the measuring node's fountain and the construction of the fountain can be carried out by the future consumer. At the

consumer request, the Operator provides the necessary services for connection to the network, based on the individually calculated expenditure.

As regards the calculation of the tariffs for the provision of drinking water, sewage and wastewater treatment services, with the specification of the composition of consumption and expenditure, the defendant stated in the same letter that the calculation of the tariffs was made on the basis of the formula provided by the Project Agreement Exhibit 1 - Terms and Conditions applicable to the On-landing Agreement). As a basis, the current tariffs were taken at the date of signing the contract, which were approved according to the Methodology for the determination and approval of tariffs for public water supply, sewerage and wastewater treatment services, approved by the ANRE CA Decision No. 164 of 29.11.2004. The tariff adjustment chart is presented in table 14, according to the terms of the Project Agreement.

**Table 14**

**Tariff increase for water and sewerage services**

No	Tariff increase in real terms (adjustments) (Tariffs excluding VAT)	Current tariffs	Initial tariff n	1 jan. 2011 n+1	1 jan. 2012 n+2	1 jan. 2013 n+3
<b>I.</b>	<b>Florești</b>	MDL/m <sup>3</sup>	MDL/m <sup>3</sup>	%	%	%
1.	Water supply					
1.1	Population	9,00	9,27	25,0%	25,0%	5,0%
1.2	Institutions	23,00	23,00	5,0%	5,0%	5,0%
1.3	Commercial companies	25,00	25,00	5,0%	5,0%	5,0%
2.	Sewerage					
2.1	Population	4,00	4,00	5,0%	5,0%	5,0%
2.2	Institutions	26,00	26,00	3,0%	3,0%	3,0%
2.3	Commercial companies and companies with their own water supply sources	28,50	28,50	3,0%	3,0%	3,0%

Source: Letter from "Servicii Comunale Florești" JSC No. 2682 of 21.10.2013

According to p 1 of " Exhibit 1 - Terms and Conditions applicable to the On-landing Agreement" of the Project Agreement, *the tariffs applied by the Project Entity should ensure the covering of the production and operating costs, maintenance, and the costs associated with the loan repayment.*

At the same time, according to Chapter 12 "Tariff System" Art. 32 of the Delegation Contract, annex to the Project Agreement, *the tariffs applied for the water supply and the sewerage service shall be set and adjusted in order to allow the Operator the full recovery of all operating costs, maintenance and repair costs, replacement of assets, expansion and improvement of infrastructure, the depreciation corresponding to the capital immobilized in non-corporeal assets, the environmental protection costs, the financial costs associated with the loans contracted by the Operator (including, without limitation, the International Loan Agreements), the*

*insurance costs, and such profit as may, from time to time, be agreed with the Local Councils.*

However, in Chapter 21 "Relevant Legislation", Art. 41 par. (1) mentions a series of legislative regulations on which the Delegation Contract will be based, including the Government Decision No. 1228 of 13.11.2007 concerning the approval of the Regulation on the acquisition, design, installation, reception and operation of water meters.

Thus, according to p. 10 of the Regulation on the acquisition, design, installation, reception and operation of water meters, approved by Government Decision No. 1228 of 13.11.2007, the acquisition, installation, operation, maintenance and repair, metrological replacement and verification activities within the time limits indicated in the official list of the measuring instruments subject to legal metrological control of the recording equipment are carried out in the apartments of the residential buildings, rooms in state homes, as well as in individual houses - by the operator (supplier) on the basis of the bilateral contract, by applying a distinct tariff, approved by the local public administration authorities for water consumption metering. In the absence of such a contract, all work on the acquisition, installation, operation, maintenance and repair, replacement and metrological verification of water meters shall be carried out on behalf of the consumer.

For the connection of the objectives belonging to the economic entities, the acquisition, installation, operation, maintenance and repair, metrological replacement and verification activities within the time limits indicated in the official list of the measuring instruments subject to legal metrological control of the recording equipment shall be carried out in accordance with the contractual clauses concluded between the consumer and the operator, from the own funds of the economic agents.

According to the Delegation Contract, the localities served by "Servicii Comunale Florești" JSC will apply a unique tariff for water supply and sewerage services equal to the one approved in Florești city by Florești City Council.

It is noted that when the EBRD investment project started there was no distinct tariff approved by Florești City Council.

At the same time, according to p. 2 of the Government Decision No. 1228 of 13.11.2007 for the approval of the Regulation on the acquisition, design, installation, reception and operation of water meters, *the water meters in service, which correspond to the technical installation requirements and the normative acts in force, shall be used until they are completely worn on the basis of metrological verification or deterioration results.*

Accordingly of the above, the following are noted:

- Under the Project Agreement, the tariffs applied by the Project Entity must

cover the costs of production and operational costs, repair and maintenance costs, and costs associated with repayment of the loan.

- The final consumer, by paying the tariff applied for the provision of the public service of the water supply and sewerage according to the tariffs increased and adjusted according to the terms of the Project Agreement, ensures the coverage of all production and operational costs, repair, maintenance, and the costs of repayment of the loan.

- According to the provisions of the Regulation on the acquisition, design, installation, reception and operation of water meters, approved by Government Decision No. 1228 of 13.11.2007, which should be taken into account when applying the Delegation Contract, in the absence of a distinct tariff approved by Florești City Council, the acquisition, installation, operation, maintenance and repair, metrological replacement and verification activities shall be carried out in the apartments of the residential buildings, as well as in individual houses on the account of the consumer within the time limits indicated in the official list of the measuring instruments subject to legal metrological control of the recording equipment and at the branches of the objects belonging to the economic entities in accordance with the contractual clauses concluded between the consumer and the operator on the account of the own funds of the economic agents.

- According to the provisions of Government Decision No. 1228 of 13.11.2007 water meters complying with the technical installation requirements and the normative acts in force **will be used until their complete wear on the basis of metrological verification results or deterioration.**

Thus, in the absence of a separate tariff approved by the local public administration authorities, the acquisition / installation of water meters in individual houses, apartments of the residential buildings is made on account of consumer. At the same time, according to the same Government Decision, water meters of the both natural persons and economic agents, that meet the technical installation requirements and the normative acts in force will be used up to their complete wear on the basis of the results of the metrological verification or deterioration.

In another respects, according to Art. 20 par. (1) of Chapter 9 "Obligations of Parties" of the Delegation Contract, Local Councils (Florești city, Ghindești city, Ghindești commune, Mărculești city, Mărculești village, Izvoare commune, Lunga village, Domulgeni village, Vărvăreuca commune and the Roșietici commune (Cenușa village)) *have the obligation to review and approve the tariffs approved by the Operator ("Servicii Comunale Florești" JSC) for water supply and sewerage services, according to regulation in force and with the observance of the provisions of the Delegation Contract, International Loan Agreements.*



Therefore, the revision of tariffs for water supply and sewerage services, as well as the approval of these tariffs, is ensured by the Local Councils, as contracting parties to the Delegation Contract, subject to compliance with the regulations in force.

Following a new Competition Council request for information on the installation of water meters, subcontracted through the EBRD loan, by letter No. 263 from 09.04.2015, "Servicii Comunale Florești" JSC specified that, according to the Decision of the Florești City Council regarding the approval of the distinct tariff No. 04/02 of 17.04.2014, the installation of the water meters is carried out on the own funds of the Operator, starting with 17.04.2014.

The information was also confirmed by Florești City Council through letter No. 02-1/24-1049 of 27.04.2015 addressed to the Competition Council.

Thus, by Decision No. 04/02 of 17.04.2014 had been approved the distinct tariff for acquisition, installation, periodical metrological verification, reception and operation of water meters, amounting to 7,86 lei / month per individual consumer, included in the tariff for water supply and sewerage system that entered into force with the adoption of the Decision. At the same time, it was decided to oblige the "Servicii Comunale Florești" JSC to initiate the procedure of installing the water meters with remote data reading to the individual consumers- from Florești city, without charge, starting from 17.04.2014.

Analyzing the contracts for water supply, waste water reception and technical servicing, contracts concluded with individual consumers, submitted by "Servicii Comunale Florești" JSC through the letter No. 142 dated 08.02.2017, it is determined that on the basis of the distinct tariff the Operator, "Servicii Comunale Florești" JSC, is obliged to provide only services of assembly, dismantling, reception, sealing of water meters, both for reception and sealing after repair or verification, and for the presentation of water meters for periodic metrological verification at the competent bodies. At the same time, the contracts concluded with individual consumers do not stipulate the purchase obligation of the water meters, as well as the metrological verification of water meters on the supplier's account, taking into account/consideration that there is a distinct tariff approved by the local public administration authorities for the acquisition, installation, periodic metrological verification, reception and operation of water meters. Thus, the Operator can shirk from the provision of the services that are not expressly stipulated in the bilateral agreement concluded with the consumer, namely the provision of the metrological acquisition and metrological verification service of the water meter on his own.

At the request of the Competition Council to communicate which subscribers are charged with the distinct tariff that were approved by the Decision of Florești City Council No. 04/02 of 17.04.2014, the defendant by address No. 227 from 07.04.2016

mentioned that 1892 pcs. of water meters Dn 15 Flodis type were sold to consumers until the approval of the new tariffs on 01.04.2014. All these consumers pay the approved tariff. The rest of the consumers who purchased water meters of another type until the tariff was approved also paid the distinct tariff.

The defendant attached to the aforementioned letter the calculation of the distinct tariff for the acquisition, installation of the measuring group and metrological control of the water meter.

According to the calculation made by the defendant, the distinct tariff includes and refers to the acquisition cost of the entire measuring group containing the TU1 Flodis water meter (722,92 lei), the cost of installing the measuring group (109,39 lei) and the cost of the metrological verification of the water meter once every 5 years (55,44 lei).

Thus, starting April 2014, each subscriber / individual of "Servicii Comunale Florești" JSC pays a fee of 0,92 lei / m<sup>3</sup> of consumed water, fee included in the tariff for the water supply and sewerage service.

By the same letter, No. 227 dated 07.04.2016, the defendant informed that, as of 01.04.2016, 4871 pcs. of water meters were installed based on the distinct tariff. Here, the defendant also mentioned that new water meters were installed to 6763 subscribers out of a total of 10472 subscribers.

According to the Art. 14 par. (5) of the Law on Public Utilities No. 1402 of 24.10.2002 *the tariffs for water supply, sewerage and sewerage treatment services, as well as the tariffs for auxiliary services for the provision of basic services, are approved by the local public administration authorities or, as the case may be, by the National Agency for Energy Regulation in accordance with the legislation in force.*

According to the provisions of p. 10 of the Regulation on the acquisition, design, installation, reception and operation of water meters, approved by the Government Decision No. 1228 of 13.11.2007 the approval of a distinct tariff for the acquisition, installation, periodical metrological verification, reception and operation of the water meter fall within the responsibility of the local public authority, in this case the Florești City Council. The decision to approve the distinct tariff was only taken in April 2014, two years after the start of the EBRD project regarding to the installation of TU1 Flodis type water meters to consumers.

In conclusion, 1892 subscribers out of the 10 472 subscribers of "Servicii Comunale Florești" JSC, who purchased and installed the TU1 Flodis water meter, on their own, until the Florești City Council approved the distinct tariff on 17.04.2014, once again bears the cost of the water meter and the entire measuring group by paying the distinct tariff of 0,92 lei / m<sup>3</sup> of consumed water included in the tariff for the water supply service which they are paying already, monthly from April, 2014. At the

same time, the cost of the TU1 Flodis type water meter and the entire measuring group (722,92 lei) it is also borne by the subscribers who installed other types of water meters that meet the technical installation requirements and normative acts in force, who also are paying the distinct tariff of 0,92 lei / m<sup>3</sup> of water consumed starting with April, 2014.

The defendant also mentions that with the entry into force on 14.09.2014 of Law No. 303 of 13.12.2013 on the public service of water supply and sewerage, according to Art. 15 par. (2) let. g) *The operator is obliged to install, repair, replace and metrologically verify the water meters according to the provisions of Art. 26.*

Thus, according to Art. 26 par. (4) of the Law No. 303 of 13.12.2013 on the public service of water supply and sewerage *The acquisition, installation, operation, maintenance, repair, replacement and metrological verification of the water meter connected at the branches shall be carried out:*

*a) at residential buildings and at individual houses - by the operator, on the account of the financial resources stipulated in the tariffs for the public service of water supply and sewerage, calculated according to the Methodology of determination, approval and application of tariffs for the water supply, sewerage and sewerage treatment services;*

*b) in the apartments of the residential buildings - by the operator, under the conditions stipulated in Art. 29 par. (3) and (4), by applying the distinct tariff, or by the owners of the apartments, in the manner established by the manager of the residential building, under the conditions provided by Art. 29 par. (2);*

*c) to other consumers - according to the clauses of the contract concluded between the consumer and the operator, from the consumer's financial resources.*

Therefore, according to the provisions of Law No. 303 of 13.12.2013 on the public service of water supply and sewerage, the acquisition, installation, operation, maintenance, repair, replacement and metrological verification of the water meter connected at the branches, starting with 14.09.2014, will be carried out on residential buildings and individual houses by the operator, from the tariffs for the water supply and sewerage service calculated according to the Methodology for determination, approval and application of tariffs for the water supply, sewerage and sewerage treatment service and approved by the National Agency for Energy Regulation.

In the apartments, the acquisition, installation, operation, maintenance, repair, replacement and metrological verification of water meters will be carried out by the operator based on a distinct tariff if there have been concluded individual contracts with the owners / tenants of the apartments or by the owners of the apartments if the contracts on the provision of the public service of water supply and sewerage are concluded with the manager of the residential building.

At the economic agents, according to Art. 26 par. (4), let. c) the above mentioned acquisition, installation, operation, maintenance, repair, replacement and metrological verification of the water meters shall be made according to the clauses of the contract concluded between the consumer and the operator, on the account of the consumer's financial resources.

Therefore, it is noted that the distinct tariff included in the tariff for water supply and sewerage services cannot be applied by "Servicii Comunale Florești" JSC to both consumers in individual houses and consumers in apartment buildings that have not concluded individual contracts with defendant, as this contravenes Art. 26 par. (4) of the Law No. 303 of 13.12.2013 on the public service of water supply and sewerage.

Thus, the claim of the defendant in letter No. 227 of 07.04.2016, that, *according to Art. 15 par. (2) let. g) the operator is obliged to install, repair, replace and metrological verify the water meters according to the provisions of Art. 26*, is not supported by its actions, namely by applying the distinct tariff to all categories of consumers - natural persons, although the legal provisions stipulate otherwise.

Moreover, the notion of the distinct tariff approved by the Decision of the Florești City Council does not correspond to the notion given by the provisions of Art. 4 of Law No. 303 of 13.12.2013 on the public service of water supply and sewerage. Thus, the distinct tariff is the tariff approved by the local council or, as the case may be, by the National Agency for Energy Regulation and includes the justified costs of the operator only for the acquisition and initial installation of a water meter in an apartment in the building.

As it appears from the text of the Decision of Florești City Council No. 04/03 of 17.04.2014 the current tariffs applied for the water supply and sewerage services by "Servicii Comunale Florești" JSC, were adopted by examining the demarche No. 528 from 28.10.2010 submitted by "Servicii Comunale Florești" JSC, as well as according to the Government Decision No. 164 of 29.11.2004 on the methodology for determining the approval and the application of the tariffs for the public services for water supply and waste water treatment and the provisions of the Loan Agreement signed between the Republic of Moldova and the EBRD on 16.06.2010. The Competition Council mentions that based on this Loan Agreement, on 20.10.2010 was signed the Project Agreement, and as part of this Project Agreement, was signed the Delegation Contract, in which Chapter 21 "Relevant Legislation" refers to a series of the legislative regulations on which the Delegation Contract will be based, including the Government Decision No. 1228 of 13.11.2007 for the approval of the Regulation on the acquisition, design, installation, reception and operation of water meters.

At the same time, Art. 41 par. (2) of Chapter 21 "Relevant Legislation" states

that *within 2 (two) months of the entering into force of any new relevant regulation in the field or within the legal term established by such new regulation, whichever of the two terms falls earlier, the Parties should properly amend this Delegation Agreement in order to make it entirely in compliance with the provisions of the new regulation.*

Moreover, Art. 43 par. (1) and (2) in Chapter 22 "Final Provisions" of the aforementioned contract stipulate that *the provisions of this Agreement shall be supplemented with the provisions of the legislation in force. In the case of any inconsistencies between the provisions of this Agreement and the legal provisions in force, the legal provisions shall prevail, respectively the Parties shall properly amend this Agreement.*

At the same time, Art. 8 of the Delegation Contract stipulates that *the rights and obligations of the Operator in operating the water and sewerage systems in the Service Area and the rights and obligations of the Local Councils in assisting the Operator to reach those objective* are defined in the Delegation Contract.

Thus, according to Art. 20 par. (1) of Chapter 9 "Obligations of Parties" Local Councils (Florești city, Ghindești city, Ghindești commune, Mărculești city, Mărculești village, Izvoare commune, Lunga village, Domulgeni village, Vărvăreuca commune and the Roșietici commune (Cenușa village)) have the obligation to review and approve the tariffs proposed by the Operator ("Servicii Comunale Florești" JSC) for water supply and sewerage services, according to regulation in force and with the observance of the provisions of the Delegation Agreement and the International Loan Agreements.

Therefore, in the context of the above mentioned, the review of tariffs for water supply and sewerage services, as well as the approval of these tariffs, is ensured by the Local Councils, as Contracting Parties to the Delegation Contract, subject to compliance with the regulations in force.

It is specified that both Law No. 303 of 13.12.2013 on the public service of water supply and sewerage (date of entry into force - 14.09.2014) and the Methodology for determination, approval and application of the tariffs for water supply, sewerage and waste water treatment service adopted by ANRE Decision No. 741 from 18.12.2014 (date of entry into force - 13.02.2015) regarding the approval of the Methodology for determination, approval and application of the tariffs for the public service of water supply, sewerage and waste water treatment, came into force after the approval of the Decisions No. 04/02 and 04/03 of 17.04.2014 regarding the approval of the distinct tariff included in the tariff for the water supply and sewerage service, respectively regarding the approval of tariffs for water supply and sewerage services by Florești City Council. Thus, taking into account the provisions of Art. 43 par. (1) and (2) of Chapter 22 "Final Provisions" of the Delegation Contract, bringing

Delegation Contract into compliance with the new regulations in force falls on the parties to this contract.

At the hearings held at the Competition Council's headquarters on 23.05.2017, the representative of "Servicii Comunale Florești" JSC informed that the Local Councils had submitted proposals to amend the Delegation Contract. According to the information provided by letter No. 479 of 01.06.2017, at the proposal of the defendant, on 18.01.2017 took place the seminar on the modification of the Delegation Contract, in which it was proposed for discussion the Additional Act No. 1 to the Delegation Contract which provided for bringing the Delegation Contract into compliance with the provisions of Law No. 303 of 13.12.2013 on the public water supply and sewerage service and with the ANRE Board of Administration Decision No. 271/2015 of 16.12.2015 regarding the approval of the Regulation on the public service of water supply and sewerage.

The conclusion drawn from the above is that the application of tariffs to water supply and sewerage services to the consumers from the 10 localities that are part of the EBRD investment project has been realized, starting with the entry into force of Law No. 303 of 13.12.2013 on the public service of water supply and sewerage without taking into account the changes in the national legislation in this field, as stipulated in the Delegation Contract.

In response to the Competition Council address No. 05 / 143-783 from 03.05.2016 all 9 local councils from Ghindești city, Ghindești commune, Mărculești city, Mărculești village, Izvoare commune, Lunga village, Domulgeni village, Vărvăreuca commune and the Roșietici commune (Cenușa village) have communicated that the tariffs for the provision of the water supply and sewerage service were not reviewed and approved, as well as the distinct tariff intended for the acquisition, installation, periodic metrological verification, reception and operation of the water meters tariff that is currently applied by "Servicii Comunale Florești" JSC. At the same time, Ghindești village Hall, reported that the tariffs are approved by the Florești City Council, according to Art. 32 par. (2) of Chapter 12 of the Delegation Contract, that stipulates *all localities that are operated by the same project entity ("Servicii Comunale Florești" JSC) will apply the same tariff for water and wastewater services as the one applied in the main city (Florești)*. The same opinion was communicated to the Competition Council and by Florești City Council through the explanatory note dated 31.05.2016.

Thus, according to the information communicated by 10 local councils - that are contracting parties to the Delegation Contract, the approval and revision of the tariffs for the water supply and sewerage service currently applied to the subscribers of "Servicii Comunale Florești" JSC was made by the Florești City Council, the tariffs

being applied in all 10 localities according to Art. 32 par. (2) of Chapter 12 of the Delegation Contract.

Inletter No. APD-05/329-1898 of 09.11.2016, the Competition Council requested ANRE's opinion on the distinct tariff charged by the defendant and approved by the Florești City Council through Decision 04/02 of 17.04.2014.

According to ANRE, the Decision of Florești City Council No. 04/02 of 17.04.2014 is in conformity with the provisions of the Regulation on the acquisition, design, installation, reception and operation of water meters, approved by the Government Decision No. 1228 of 13.11.2007 and with the provisions of the Law on local public administration No. 436 from 28.12.2006 which by Art. 14 par. (3) stipulates that *the local council also performs other competencies established by law, by the status of the village (commune), the city (municipality) or by the regulation of the council.*

Thus, until the approval of the distinct tariff by Decision No. 04/02 of 17.04.2014 by Florești City council, the defendant sold the TU1 Flodis water meters, procured within the EBRD project, under Government Decision No. 1228 of 13.11.2007 and after the approval of the distinct tariff, the operator initiated the procedure of installing TU1 Flodis type water meters to consumers / individuals on the basis of this tariff, which represents 0,92 lei / m<sup>3</sup> of water consumed, tariff included in the tariff for the water supply and sewage services. At the same time, the distinct tariff is applied to both consumers who have purchased the TU1 Flodis type water meter on their own, as well as to consumers who own / have installed water meters other than the TU1 Flodis, but which meet the technical installation requirements and normative acts in force.

Regarding the actions of "Servicii Comunale Florești" JSC, related to the imposing of the double payment for the TU1 Flodis water meter, the following are found.

According to Government Decision No. 1228 of 13.11.2007, on which the Delegation Contract is based, in the absence of a distinct tariff approved by the local public administration authorities, the acquisition, installation, operation, maintenance and repair, replacement and metrological verification of water meters at individual houses, residential blocks are made by the consumers on its own.

At the same time, the obligation to review and approve tariffs for water and sewerage services under the Delegation Contract, in accordance with Art. 20 par. (1) and in conjunction with Art. 32 par. (2) of this contract is provided by Florești City Council, which owns 100% of the shares of "Servicii Comunale Florești" JSC.

Florești City Council approved on 17.04.2014 the distinct tariff intended for the acquisition, installation, periodic metrological verification, reception and operation of

the water meters and tariffs for the water supply and sewerage services by Decision No. 04/02 and Decision No. 04/03. Thus, by Decision No. 04/02 "Servicii Comunale Florești" JSC was obliged to initiate the procedure of installation the water meters with remote data reading, at no charge, to individual consumers – of Florești city starting with 17.04.2014, decision to which the defendant complied.

At the same time, according to ANRE, the Decision of Florești City Council regarding the approval of the distinct tariff is in accordance with the provisions of the Government Decision No. 1228 of 13.11.2007, on which, reiterated, the Delegation Contract is based and with the provisions of Art. 14 par. (3) of the Law on local public administration No. 436 of 28.12.2006.

In view of the above, the action of "Servicii Comunale Florești" JSC regarding the imposing of double payment on consumers (when purchasing the water meter and collecting the tariff for the water supply and the sewerage service which also includes the cost of the water meter) for the TU1 Flodis water meter does not meet the signs of breaching the provisions of Art. 11 par. (2) let. a) of the Competition Law No. 183 of 11.07.2012, since the marketing of water meters to consumers / natural persons was an action under the legislative regulation on which was based the contract by which the defendant was delegated to provide the public water supply and sewerage service within the relevant geographic market. Here also, the Competition Council mentions that the "Servicii Comunale Florești" JSC action regarding the sale of water meters is a consequence of the inaction of Florești City Council, which did not approve a distinct tariff at the beginning of the EBRD investment project in Florești district.

Relating to the "Servicii Comunale Florești" JSC action, regarding the disconnection from the water supply systems of the "Bio-Test" LLC medical laboratory following the refusal to change the water meter, the following are mentioned.

In fact, on 02.04.2013, the medical laboratory of "Bio-Test" LLC was disconnected from the water supply by "Servicii Comunale Florești" JSC, following the refusal to change the water meters whose terms of use based on repeated metrological verifications is up to 19.04.2018, respectively until 09.04.2018.

The actions of "Servicii Comunale Florești" JSC regarding the disconnection of the medical laboratory of "Bio-Test" LLC from the water supply due to the refusal to change the water meter cannot be justified because the Delegation Contract is based on a series of national legislative regulations, including Government Decision No. 1228 of 13.11.2007.

According to Government Decision No. 1228 of 13.11.2007 water meters complying with the technical installation requirements and the normative acts in force **will be used until their complete wear on the basis of metrological verification**



## **results or deterioration.**

From the materials presented by "Bio-Test" LLC, it is noted that the term of use of LXH type water meter No. 08-011527 Dn-15 and Belassitsa type water meter No. 0043466 Dn-15 was until 06.03.2014, respectively until 01.04.2016 (Annex 2 to the complaint of 30.05.2013). On 09.04.2013 the water meters were repeatedly subjected to the metrological verification. As a result, according to the metrological verification bulletins No. 13 / 07-3971 and No. 1892 the validity of the LXH type water meter No. 08-011527 Dn-15 was extended until 19.04.2018, and for the Belassitsa type water meter No. 0043466 Dn-15 until 09.04.2018 (Annex 5 to the complaint of 30.05.2013). At the same time, according to the act of 12.08.2009 on the reception, installation and putting into operation of the water meters, signed by the representative of "Bio-Test" LLC and "Servicii Comunale Florești" JSC, the LXH type water meter No. 08-011527 Dn-15 and Belassitsa type water meter No. 0043466 Dn-15 were mounted according to the technical conditions (Annex 2 p2 to the complaint).

At the same time, the LXH Dn-15 type water meter and Belassitsa Dn-15 type water meter are listed in the State Register of measuring instruments permitted for use in the Republic of Moldova for the years 1993-2010 as at 31.01.2017.

According to Art. 12 par. (9) of the Metrology Law No. 647 of 17.11.1995 it is forbidden the use of measuring instruments without metrological markings or with metrological damaged markings, altered, removed or with the metrological verification expired for the measurements performed in the fields specified in Art. 11 par. (1). The domains specified in Art. 11 par. (1) are the following: a) health and safety of the population; b) public order; c) environmental protection; d) protection of consumer rights; e) levying taxes and duties; f) trade and commercial transactions; g) quality control of products, processes and services; h) ensuring national security and defense; i) other areas of public interest established by the Government where the incorrect measurement or measurement results can directly or indirectly affect people's lives or the interests of individuals and / or legal entities.

According to Art. 12 par. (12) of the Metrology Law No. 647 of 17.11.1995 the measuring instruments which, in the framework of legal metrological control, were found to be inadequate (without model approval, without metrological verification, no model approval certificates, no metrological verification bulletins, no calibration certificates or tampering with the metrological verification mark, damaged, altered, falsified, removed) or those on which expired verification marks are applied do not have the status of legal instruments of measurement.

Thus, the Metrology Law No. 647 of 17.11.1995 prohibits the use of measuring instruments with the expired term of validity.

Therefore, the imposition of "Bio-Test" LLC to change water meters as well as

the interruption of the water supply service as a result of the refusal to change the water meters cannot be justified by the application of the provisions of the national legislation which, otherwise, it should be taken into account when applying the Delegation Contract.

In the same vein, the Competition Council mentions that in the Business Plan Annex 3 "Action plan for the implementation of the goals set out in the Business Plan" were established a number of strategic objectives for the implementation of EBRD investment project.

Pursuant to Objective 4, the defendant would increase the connection rate to the central water supply network by 20% by the end of 2014 and one of the actions envisaged was the development and release of technical conditions for new consumers on request for connection to the water supply network and water meter installation, with a deadline to be executed by the end of 2018..

Under Objective 6 "Reduction of the non-invoiced water volume by 10% by 2014", one of the expected actions for the objective implementation was the installation of 11 540 Class C precision water meters with remote data reading by the end of 2018.

According to the Business Plan - annex to the Delegation Contract, which is part of the Project Agreement that was elaborated on the basis of the Loan Agreement which was ratified by Parliament's Law No. 203 from 16.07.2010, it is established that the defendant committed to elaborate, on request, the technical conditions for installation of the water meters purchased within the EBRD investment project to the new consumers. The "Bio-Test" LLC was not a new consumer, as it was already served by "Servicii Comunale Florești" JSC on the basis of Contract No. 19 on water supply and wastewater reception of 03.08.2009.

With reference to the conflict between "Servicii Comunale Florești" JSC and "Bio-Test" LLC, Mr. Sergiu Rusu, director of "Servicii Comunale Florești" JSC, during the working session of 11.07.2013, organized at the Competition Council's headquarters, informed that the problem was solved by reconnecting the medical laboratory of "Bio-Test" LLC to the water supply network. Moreover, the existing water meter has not been replaced. Also, by letter of 16.10.2013, "Bio-Test" LLC informed that during the period 18.06.2013 - 21.06.2013, following the meeting of Florești City Council related to the forced replace of water meters to consumers, "Servicii Comunale Florești" JSC has reconnected to the water supply network the medical laboratory of "Bio-Test" LLC on 25.06.2013.

On 15.03.2017, by letters No. APD - 05 / 63-512, No. APD - 05 / 64-509 and No. APD-05 / 65-511, the Competition Council submitted the investigation report to the "Bio-Test" LLC, to the "Servicii Comunale Florești" JSC and to the Florești City

Council for the submission of objections and proposals based on it. Thus, only "Servicii Comunale Florești" JSC by letter No. 329 of 04.04.2017 objected to the investigation report as follows.

### **"Servicii Comunale Florești" JSC objection**

"In accordance with Art. 2 Water meters in operation which comply with the technical installation requirements and the normative acts in force shall be used until they are completely worn on the basis of the results of the metrological verification or deterioration. (Decision approving the Regulation on the acquisition, design, installation, reception and operation of water meters No. 1228 of 13.11.2007).

According to Art. 9, the specific type of water meters shall be selected by the operator (supplier) according to the approved models and which are included in the State Register of measuring instruments permitted for use in the Republic of Moldova, with the inclusion of the respective type in the technical conditions issued by the operator. (Annex 1 to Government Decision No. 1228 of 13.11.2007 on the acquisition, design, installation, reception and operation of water meters).

Art. 36 The supplier shall determine the type and the diameter of the water meters to be used from those included in the State Register of measuring instruments, in compliance with metrological norms recommended by the Department of Standardization and Metrology).

Art. 37 The supplier has the right to change the type and diameter of the meters in operation, if the new regulations so require. (Regulation on the use of communal water supply and sewerage systems approved by the Government Decision of the Republic of Moldova No. 656 o May 27, 2002).

According to Art. 26 par. (5) The concrete type of water meter to be installed shall be selected by the operator according to the approved models and which is included in the State Register of Means of Measurement of the Republic of Moldova, indicating their parameters and technical characteristics under the technical conditions stipulated in the contract concluded between consumer and operator. (Law on Public Service of Water Supply and Sewerage No. 303 of 13.12.2013).

According to Article 71 The concrete meter type, parameters and technical characteristics of the meter to be installed to the consumer shall be selected by the operator in accordance with the approved models and included in the State Register of measuring instruments permitted for use in the Republic of Moldova and shall be stipulated in the Connection Notice and in the contract concluded between the consumer and the operator. (Annex to ANRE Board of Directors Decision No. 271/2015 of 16 December 2015 Regulation on public service of water supply and sewerage).

Considering the above, it is obvious that the legislator and the normative acts previously and recently elaborated by the Government and ANRE confirm that the Supplier will determine the type and the diameter of the water meters."

### **The Competition Council's reply to the objection**

LXH Dn-15 and Belassitsa Dn-15 type water meters are listed in the State Register of measuring instruments permitted for use in the Republic of Moldova for the years 1993-2010 as at 31.01.2017.

According to the act of 12.08.2009 regarding the reception, installation and putting into operation of the water meters, signed by the representative of "Bio-Test" LLC and the representative of "Servicii Comunale Florești" JSC, it is noted that the Belassitsa type water meter No. 0043466 Dn-15 and LXH type water meter No. 08-011527 Dn-15 were mounted according to the technical conditions.

At the time of disconnection on 02.04.2013 of LXH type water meter No. 08-011527 Dn-15 and Belassitsa type water meter No. 0043466 Dn-15 which were installed in the laboratory of "Bio-Test" LLC by "Servicii Comunale Florești" JSC from the water supply and sewerage networks, the water meters had a valid usage term, according to the metrological verification bulletins, up to date of 06.03.2014, respectively 01.04.2016 (Annex 2 to the complaint of 30.05.2013). On a new metrological verification, on 09.04.2013, the term of use of water meters was extended according to the metrological verification bulletins No. 13 / 07-3971 and No. 1892 until 09.04.2018, respectively until 19.04.2018.

According to the provisions of Art. 37 of the Government Decision No. 656 of 27.05.2002 regarding the approval of the Framework Regulation on the use of communal water supply and sewerage systems, the supplier has the right to change the type and diameter of the water meters in operation, if the new regulations so require. In this context, it is mentioned that no new regulations were imposed which would require the supplier to change the type and the diameter of the water meters in operation which, moreover, have been installed according to the technical conditions and which correspond to the normative acts in force and have no expired term of exploitation.

In letter No. APD-08 / 143-396 dated 07.06.2013, the Competition Council requested from the defendant the legal basis on which it was necessary to switch to the computerized water consumption record system in Florești district. The defendant invoked the same Government Decision No. 656 of 27.05.2002, as well as the provisions of the Project Agreement.

Art. 23 p. (3) of the Delegation Contract (part of the Project Agreement) signed on 03.11.2011 obliges the Operator (no "Servicii Comunale Florești" JSC) to install water meters and ensure that by the expiration of the implementation term of the

project no less than 90% of its residential customers and industrial customers will have water meters (or were relevant, connection water meters) installed and that the billing is conducted on the basis of such water meter readings on the water connection of each customer.

Moreover, According to the Business Plan - annex to the Delegation Contract, which is part of the Project Agreement that was elaborated on the basis of the Loan Agreement which was ratified by Parliament's Law No. 203 from 16.07.2010, it is established that the defendant committed to elaborate, on request, technical conditions for the installation of the water meters purchased within the EBRD investment project to the new consumers. The "Bio-Test" LLC was not a new consumer, as it was already served by "Servicii Comunale Florești" JSC on the basis of Contract No. 19 on water supply and wastewater reception of 03.08.2009.

Thus, neither the Delegation Contract signed by the "Servicii Comunale Florești" JSC and the Local Councils on 03.11.2011, nor the Business Plan, annex to the Delegation Contract, provide for obligations towards the operator, which would impose to change the water meters being in operation and which are installed according to the technical requirements and have a valid term of usage.

The defendant's invocation of the Loan Agreement signed between the Republic of Moldova and the EBRD on 16.06.2010, on the basis of which the EBRD Investment Project was implemented in the 10 localities of Florești district as a new regulation requiring to change the type and the diameter of the water meters in operation so as to oblige "Bio-Test" LLC to acquire other water meters and to change the water meters in operation is not justified as no normative acts have been adopted in which new rules are to be laid down in this respect.

The Loan Agreement of 16.06.2010, in the part of the localities in the Florești district, provides for the rehabilitation of the aqueduct system in Florești and the extension of the aqueduct system to / from the villages. The agreement does not expressly provide for the replacement of water meters in operation, especially if they have a valid term of usage.

#### **IV. The legal qualification of the actions found according to the provisions of the Competition Law No. 183 from 11.07.2012**

In accordance with Art. 11 par. (1) and (2) let. a) of the Competition Law No. 183 of 11.07.2012, is forbidden any abusive use of the dominant position within the relevant market, to the extent it may affect the competition or damage the collective interests of the final consumers on the relevant market, which may consist in directly or indirectly imposing unfair purchase or selling prices, or other unfair trading conditions.

Analyzing the actions described above, the Competition Council notes the following.

**I.** Referring to the actions of the "Servicii Comunale Florești" JSC regarding the commercialization of the TU1 Flodis type water meters until 17.04.2014, it is noted that during the course of the investigation no sufficient evidence was found regarding the finding of the violation of Art. 11 par. (2) let. a) of the Competition Law No. 183 from 11.07.2012 by "Servicii Comunale Florești" JSC, which would justify the application of corrective measures or sanctions, as:

- When applying the Contract for the delegation of regional water supply services for Florești district from 03.11.2011, the provisions of the Government Decision No. 1228 of 13.11.2007 should be taken into account. Thus, in the absence of a distinct tariff approved by Florești City Council, "Servicii Comunale Florești" JSC sold the TU1 Flodis type water meters purchased under the project agreement financed from the EBRD, EIB and NIF financial sources.

- On 17.04.2014, Florești City Council through Decisions No. 04/02 and No. 04/03 approved the distinct tariff intended for the acquisition, installation, periodic metrological verification, reception and operation of the water meters and tariffs for the water supply and sewerage services. At the same time, by Decision No. 04/02 "Servicii Comunale Florești" JSC was obliged to initiate the procedure of installation the water meters with remote data reading, at no charge, to consumers – individuals, in Florești city starting with 17.04.2014, decision to which the defendant complied.

**II.** On the part of the "Servicii Comunale Florești" JSC action referring to the termination of the contract and the unjustified disconnection of the medical laboratory of "Bio-Test" LLC from the water supply network as a result of the refusal to replace the existing water meters with some type TU1 Flodis water meters "Servicii Comunale Florești" JSC committed an abuse of dominant position and thus violated the provisions of Art. 11 par. (2) let. g) of the Competition Law No. 183 of 11.07.2012 whereas:

- The medical laboratory of "Bio-Test" LLC was disconnected on 02.04.2013 from water supply network by "Servicii Comunale Florești" JSC, following the refusal to replace the water meters whose terms of use based on repeated metrological verifications is up to 19.04.2018, respectively until 09.04.2018.

- According to Government Decision No. 1228 of 13.11.2007, normative act the provisions of which are taken into account in the application of the Contract for granting (delegation) of the regional water supply services for Florești district from 03.11.2011, water meters complying with the technical installation requirements and the normative acts in force will be used until their complete wear on the basis of

metrological verification results or deterioration.

- According to the provisions of Art. 37 of the Government Decision No. 656 of 27.05.2002 regarding the approval of the Framework Regulation on the use of communal water supply and sewerage systems, the supplier has the right to change the type and diameter of the water meters in operation, if the new regulations so require.

- No normative acts were adopted in which new rules would be imposed which would require the supplier to change the type and the diameter of the water meters in operation which, moreover, have been installed according to the technical conditions and which correspond to the normative acts in force and have no expired term of exploitation.

- Analyzing the Loan Agreement between the Republic of Moldova and the EBRD dated 16.06.2010 and ratified by Parliament's Law No. 203 of 16.07.2010, the Project Agreement of the Program for the development of water supply and sewerage companies signed on 20.12.2010 by Florești City Council, the ten localities of Florești district, "Servicii Comunale Florești" JSC and the EBRD, as well as the acts signed under this agreement did not establish the obligation of the defendant to require modification of the type and diameter of the water meters in operation.

- According to the metrological verification bulletins No. 13 / 07-3971 and No. 1892 the term of use of the "Bio-Test" LLC water meters, Belassitsa type water meter No. 0043466 Dn-15 and LXH type water meter No. 08-011527 Dn-15 type was extended until 09.04.2018, and until 19.04.2018 respectively. According to the act of 12.08.2009 regarding the reception, installation and putting into operation of the water meters, signed by the "Bio-Test" LLC representative and the representative of "Servicii Comunale Florești" JSC, it is noted that the Belassitsa type water meter No. 0043466 Dn-15 and LXH type water meter No. 08-011527 Dn-15 were mounted according to the technical conditions. At the same time, the LXH Dn-15 and Belassitsa Dn-15 type water meters are listed in the State Register of measuring instruments permitted for use in the Republic of Moldova for the years 1993-2010 as at 31.01.2017.

Thus, "Servicii Comunale Florești" JSC committed an abuse of dominant position by disconnecting the "Bio-Test" LLC laboratory from the water source during 02.04.2013 - 25.06.2013 for the sole reason that the complainant did refuse to replace the existing water meters which were corresponding to the technical installation requirements and the normative acts in force with TU1 Flodis water meters - which is an unjustified commercial condition and therefore violated the provisions of Art. 11 par. (2) let. g) of the Competition Law No. 183 from 11.07.2012.

Depending on duration of the infringement and according to the provisions of

Art. 72 par. (5) let. a) of the Competition Law No. 183 of 11.07.2012, the infringement falls on short duration violations (less than 1 year) - factor 1.

The "Servicii Comunale Florești" JSC action regarding the disconnection of the medical laboratory of "Bio-Test" LLC from the source of water supply, according to the findings of the investigation, has affected a limited part of the market, being directed to a single economic agent, thus recording a small impact on the market.

Thus, the basic level of the fine calculated for the gravity of the deed, according to Art. 72 par. (3) let. a) of the Competition Law No. 183 of 11.07.2012, was set at [...] % of the total turnover registered in 2016. The act falls under small gravity violations ([...] % depending on the gravity of the infringement multiplied by 1 - the factor related to the short term of the infringement).

According to Art. 73 par. (1) the basic level of the fine for the infringement of the material norms of the competition legislation may be increased or decreased by a per cent among 5% and 10% of the quantum of the basic level established in compliance with Art. 72 for each constant aggravating and mitigating circumstance

Aggravating circumstances, provided in Art. 73 of the Competition Law No. 183 of 11.07.2012 were not retained.

It is mentioned that during the work meeting held on 11.07.2013, organized at the Competition Council headquarters, the defendant informed that the problem was solved by reconnecting to water supply network the medical laboratory of "Bio-Test" LLC. The Competition Council noted this as a mitigating circumstance, as the "Servicii Comunale Florești" JSC was complied with and the medical laboratory of "Bio-Test" LLC was reconnected to the aqueduct system in the first instance of the Competition Council's interventions on the given case. Therefore, the basic level of the fine applied to "Servicii Comunale Florești" JSC which was set at [...] % of the total turnover registered in 2016 will be reduced by [...] % to [...] %.

According to the information provided by the "Servicii Comunale Florești" JSC by letter No. 368 of 19.04.2017 the total turnover achieved by the defendant in 2016 is in the amount of [...] lei.

According to Art. 36 par. (5) of the Competition Law No. 183 from 11.07.2012 the amounts representing fines and other sanctions applied by the Competition Council are income to the state budget under the law and are to be transferred to the IBAN code MD31TRGAAA14349145010000.

In accordance with Art. 43 par. (2) of the Execution Code No. 443-XV from 24.12.2004, if the amounts are collected for the benefit of the state, the quality of the beneficiary is exercised by the Ministry of Finance, fiscal code 1006601000037.

Debtor is "Servicii Comunale Florești" JSC, Florești city, Dacia Street, 20, MD-5001, IDNO – 1003607001471, [...].



Based on the findings set out above, under Art. 39, Art. 41 let. h) and let. p), Art. 71 let. a) and Art. 72 of the Competition Law No. 183 from 11.07.2012, Plenum of the Competition Council

**DECIDE:**

1. To find that during the course of the investigation no sufficient evidence was found regarding the finding of violation of the provisions of Art. 11 par. (2) let. a) of the Competition Law No. 183 of 11.07.2012 by "Servicii Comunale Florești" JSC regarding the imposing of the double payment for consumers (when purchasing the water meter and when collecting the tariff for the water supply and the sewerage service which also includes the cost of the water meter) for the installation of the Flodis type water meter, which would justify the application of corrective measures or sanctions.
2. To find violation of the provisions of Art. 11 par. (2) let. g) of the Competition Law No. 183 from 11.07.2012 by "Servicii Comunale Florești" JSC by disconnection of the "Bio-Test" LLC medical laboratory from the water supply during 02.04.2013 - 25.06.2013.
3. To apply a fine to "Servicii Comunale Florești" JSC (IDNO 1003607001471) for violation of the provisions of Art. 11 par. (2) let. g) of the Competition Law No. 183 of 11.07.2012 in the amount of 71 990,07 lei (seventy-one thousand, nine hundred ninety lei, 07 bani).
4. To notify the State Chancellery of the Republic of Moldova about the facts established in the present Decision with a view to submitting the administrative control according to the provisions of Law No. 436 from 28.12.2006 regarding the local public administration of the Florești City Council activity.
5. To inform the National Agency for Energy Regulation and the Florești City Council.
6. The amount stipulated under point 3 shall be paid to the state budget in 60 working days from the date of communication of this Decision, with the mention "fine applied by the Competition Council in compliance with the Competition Law No. 183 of 11.07.2012".
7. This Decision shall enter into force on date of its adoption and shall be communicated to Parties.

**President of the Plenum, Competition Council**  
**Viorica CĂRARE**