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Submitted for analysis and approval in the EGMS dated 10/11 February 2020

REPORT

On the conclusion of a contract for the procurement of legal consultancy, representation and assistance services

SUMMARY

By this report, we submit for analysis and approval of the Extraordinary General Meeting of Shareholders, the conclusion of a contract for the procurement of legal consultancy, assistance and representation services, necessary for the case regarding the investigation of the Competition Council, extended by Order no. 1302/2018, having as possible subject the breach of art. 5 paragraph (1) of the Competition Law no. 21/1996 and art. 101 of the TFEU, by the National gas transmission company Transgaz S.A., through the potential anti-competitive behaviour adopted during the conduct of the public procurement procedures referred to by Order no. 222 of 12.06.2014.

PROPOSAL

We submit for analysis and approval the conclusion of a contract for the procurement of legal consultancy, assistance and representation services, for 12 months, with the possibility of extension by addendum and the empowerment of the Director General of the National gas transmission company Transgaz S.A. to sign such contract, in line with the provisions of art 15 para 4) point p) of Transgaz' updated Articles of Incorporation and of art I, para (3) of GEO no 26/2012.

DETAILED CONTENT

The notification of the Competition Council with verification of the way in which the procedures for awarding sectoral works procurement contracts, organized by The national gas transmission company Transgaz S.A. in 2011, it was ordered by the

DIICOT Ordinance no. 4/D/P/2014 of 03.02.2014 and Ordinance no. 4/D/P/2014 of 30.09.2014. The investigation concerned 11 awarding procedures.

By Order no 1302/24.10.2019 the President of the Competition Council ordered the extension of the investigation to The national gas transmission company Transgaz S.A. regarding the potential anti-competition behaviour adopted during the conduct of the public awarding procedures subject of the investigation with the object of the potential breach of article 5 para (1) of Competition Law no 21/1996 and art. 101 of TFUE. Subsequently the investigation was disjoined by Order no 1303/24.10.2018.

Considering that such Investigation Report proposed the sanctioning of Transgaz S.A. for the breach of the provisions of art 5 para (1) of Competition Law no 21/1996 and of art 101 of TFUE by a fine between 0.5% and up to 10% of the total turnover achieved in the year before the sanctioning of the act, in line with the provisions of art 55 para (1) of Law 21/1996, namely a fine in the amount of 4% of the total turnover achieved in the year before the sanctioning of the act together with the proposal to apply an additional amount of 2.58% of the amount determined depending on the seriousness of the act (taking into account the average duration of the act) and the application of a 25% discount to the basic level, determined based on the gravity and the act, there is a strong need for our company to ensure a legal expertise so as to minimize the risk of an unfavourable solution by defending Transgaz' interests by means of a legal company with expertise in the field of competition law and incidental European procedures.

1. Proposed solutions for solving the need

According to Art. 37 (1) d) and (3) of Law 99/2016 on sectoral procurements (hereinafter referred to as 'Law 99/2016'), the provisions of Law 99/2016 are not applicable in the situation of the following legal services:

- *the assistance and representation of a client by a lawyer under Law 51/1995 within legal procedures in front of courts or national public authorities in Romania or in any other country or in front of courts of justice or international institutions".*

According to Art. 37 (3) point b) of Law 99/2016 the legislator recognizes the special nature of the legal services, by the possibility of contracting them without applying the procedures provided by the sectoral procurement law.

Given that the consultancy, assistance and legal representation services are exempted from the applicability of Law no. 99/2016, the contract is concluded without the application of the procedures provided for by this legal act.

In line with art I para (1) of GEO no. 26/2012 on some measures to reduce public expenses and strengthen financial discipline and for the amendment and supplementing some legal acts, national companies who have in their organizational structure their own legal staff cannot procure legal consultancy and assistance and/or representation.

However, para (3) of the same article provides for the **exception** from such restriction as follows: "*in **duly justified circumstances** in which legal consultancy, assistance and/or representation activities need by national companies and limited liability companies as well as autonomous regies provided for in para (1) cannot be ensured by the legal specialty personnel working within such entities, **such services***

may be procured, under the law only with the approval and mandate of the representatives of the state or the administrative-territorial units from their management:

- ***by the main Authorizing Officer in the case of the majority and entirely state owned companies (...)***

We deem that, in these circumstances, considering their complexity and the possible risks with negative impact on Transgaz, **the legal consultancy and assistance and/or representation activities cannot be carried out by company's legal staff and such services need to be ensured by experienced persons in the fields concerned by the Competition Council, namely: competition law, Community competition law, criminal and procedural law, civil and procedural law, contraventions field and public procurement law.**

We therefore allege the **need to procure legal services with the subject of legal consultancy, assistance and representation of Transgaz within the investigation carried out by the Competition Council as well as before the courts in relation to the above mentioned investigation, namely:**

- consultancy on the regulatory framework related to the case;
- analysis of documents considered relevant by Transgaz S.A. and the documents held by the Competition Council, the analysis from the perspective of TRANSGAZ' incrimination/exoneration of liability, respectively and the verification of the documents received/issued by TRANSGAZ in connection with this investigation;
- assistance for the preparation of the document including the comments on the Investigation Report prepared by the Competition Council;
- assistance in the preparation of any necessary documents regarding the investigation in this case;
- assistance and representation in relation with the Competition Council;
- legal assistance and representation before the courts.

Considering the complexity of the analysis and the implications the proposal has to sanction Transgaz by a fine amounting to 4% of the total turnover achieved in the year before the act, we deem it necessary that the above mentioned activities are prepared, analysed, negotiated by means of a legal company having the services of specialized lawyers with similar experience, notoriety, reputation and good results in similar cases guaranteeing the necessary professionalism to increase Transgaz' chances to attain its goals, namely to obtain a favourable solution in the investigation carried out by the Competition Council as well as in from of the legal courts.

In the light of the fact that Transgaz is also investigated by the European Commission for other two cases of the alleged infringement of the provisions of art 101 of TFEU, such activities have to be carried out by specialized lawyer from this early stage so as to minimize the risk of such investigation to advance up to the level of notification of an entity of the European Commission (cases for which Transgaz already benefits of specialized legal assistance services).

At the same time, it is also worth to take into account that **TRANSGAZ is a company listed on the Bucharest Stock Exchange** and the proposal to sanction it has a

significant negative impact this is why we submit for approval the conclusion of a **legal consultancy, assistance and representation contract** for the investigation carried out by the Competition Council on the potential breach of art 5 para (1) of Competition Law no 21/1996 and of art 101 of TFUE.

2. Expected results upon the completion of the need

Transgaz S.A. has the goal to complete the investigation carried out by the Competition Council without the application of a penalty upon the company respectively without the notification of the European Commission about the possible infringement of the provisions of the Treaty on the Functioning of the European Union.

3. The substantiation of the estimated value

With regard to the lawyer's fees, Art. 127 of the Statute of the Lawyer's Profession, adopted by Resolution 64/2011 of the National Union of Romanian Bar Associations provides at paragraph (1) that 'for his/her professional activity the lawyer has the right to be paid the fee and to cover all expenses incurred in the interest of his/her client'. *'Fees shall be fixed in relation to the difficulty, extent or duration of the case' in accordance with the items in paragraph (3), thus:*

- a) "The time and amount of work required to execute the mandate received or the activity required by the client;*
- b) the nature, novelty and difficulty of the case;*
- c) the importance of the interests concerned;*
- d) the fact that acceptance of the client's mandate prevents a lawyer from accepting another mandate from another person if that circumstance can be ascertained by the client without further investigation;*
- e) the notoriety, titles, years of work, experience, reputation and specialization of the lawyer;*
- f) cooperation with experts or other specialists, imposed by the nature, object, complexity and difficulty of the case;*
- g) the benefits and results obtained for the client's profit as a result of the work done by the lawyer;*
- h) the financial situation of the client;*
- i) time constraints in which the lawyer is bound by the circumstances of the case to act in order to provide a good legal service."*

Considering the aspects mentioned above and the complexity of the situation it is necessary to **negotiate the lawyers' fee** starting from the workload and taking into account the nature of the activity, the fact that the investigation has certain particularities involving experience in as many fields as possible, both in competition law and community law on competition criminal and procedural law, civil and procedural law, contraventions field and public procurement law.

Proposed value threshold: the amount of 100.000 euro.

Taking into account the foregoing we deem that the presented situation is thoroughly substantiated therefore it is necessary to procure legal consultancy and assistance and/or representation activities.

**Chairman of the Board of Administration
Lăpușan Remus Gabriel**