

DECISION NO. 105
of 26.03.2004
regarding the notification of the Ministry of Public Finances referring to the
guarantee that will be granted to the National Company for Radio-
communications S.A.

THE COMPETITION COUNCIL,

On the basis of:

1. Decree no. 57/2004 for the appointment of the Competition Council's members;
2. The provisions of the Competition Law no. 21/1996, published in the Official Journal no. 88, Part I, of 30.04.1996, with subsequent amendments and completions;
3. The provisions of the Law no. 143/1999 on State aid, published in the Official Journal no. 370, Part I, of 03.08.1999, with subsequent amendments and completions;
4. The Regulation regarding the organization, functioning and procedure of the Competition Council, published in the Official Journal no. 50 bis, Part I of 25.03.1997;
5. The Regulation on the form, content and other details of the state aid notification, published in Official Journal no.125, Part I of 24.03.2000;
6. The notification of the State aid, submitted by the Ministry of Public Finances by letter no. 107.273, registered at the Competition Council by no. RS-AS 05/05.02.2004, notification that became effective on 23.03.2004.

On the basis of the following grounds:

1. The notified financial support has the nature of a guarantee that the State, through the Ministry of the Public Finances, grants to the National Company for Radio-communications S.A. for contracting an external loan from the New York Societe Generale bank.

2. The beneficiary of the guarantee, the National Company for Radio-communications S.A., was established by GD no. 372/1998 by reorganizing the Autonomous Regie Radio-communications, as radio-communications national operator, with entire State capital. The main activity object of the National Company for Radio-communications SA is:

- providing and trading the communications services;

- maintaining and exploiting, developing and modernizing the national radio-communications system (own networks of radio-relay, radio-broadcasting, television, mobile radio communications, communications by satellite and telephone networks of radio connection to the public commuted network);
- organizing the necessary radio-communication services to the national system of operation and national security under the terms of the law;
- ensuring the activity of signatory in the international satellite communications organizations which Romania is part of.

3. The relevant market of the product is represented by the telecommunications services market; the National Company for Radio-communications SA exerts its activity on the entire territory of Romania and outside it.

The services provided by the National Company for Radio-communications SA and the main competitors on each type of service are:

No.	Type of service performed	Competitors
1.	Transport and broadcasting of the programs of the Romanian Society of Radio Broadcasting, the Romanian Company of Television	No competitor. The National Company for Radio-communications SA is the only supplier of such services.
2.	Renting locations and aerial supports	No competitor. The National Company for Radio-communications SA is the only supplier of such services.
3.	Rented lines	RomTelecom S.A., Orange, CFR, RDS
4.	Private virtual networks (VPN)	Mobifon S.A., ArTelecom, GTS Telecom
5.	Internet	RDS, Astral Telecom, ArTelecom, GTS Telecom, PC NET, Euroweb, Mobifon S.A.
6.	Occasional transmissions	No competitor. The National Company for Radio-communications SA is the only supplier of such services.
7.	Video-conference	No competitor. The National Company for Radio-communications SA is the only supplier of such services.

8.	Spatial Communications by satellite	No competitor. The National Company for Radio-communications SA is the only supplier of such services.
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4. The external loan guaranteed by the State is destined to finance the project „Enlargement and modernization of the Ground Station Cheia”. The project consists in achieving the following investments objectives:

- ✍ Implementing a high technology for the service VoIP and Internet;
- ✍ Providing the vocal services
- ✍ Modernizing the Ground Station Cheia by creating a operating and control center for the national network VoIP, up-grading the existing station, providing the access to the Internet by satellite;
- ✍ Using a common platform for voice and access to the Internet.

The total cost of the investment is of USD 17,833,681 and represents: telecommunication equipments purchased by commercial contract closed by the National Company for Radio-communications S.A. with the Globecomm System Inc Company, in value of USD 14,986,287 and works of montage-constructions works, in value of USD 2,847,394.

5. The financing sources of the investment are:

- ✍ Societe Generale New York loan in value of USD 14,590,743;
- ✍ BancPost commercial loan in value of USD 2,500,000;
- ✍ own sources of the company in value of USD 742,938.

6. The total value of the external loan is of USD 14,590,743. The guaranteed value has the following structure:

- ✍ 85% of the value of the commercial contract closed with Globecomm System SUA (company that delivers telecommunications equipments necessary for the National Company for Radio-communications S.A.), representing USD 12,738,344;
- ✍ 85% of the value of the arrangement fee charged by the New York Societe Generale bank, representing USD 48,488;
- ✍ 100% of the insurance premium charged by EXIMBANK SUA for guaranteeing the loan garantarea creditului fata de furnizorul american Globecomm System SUA, representing USD 1,474,322.

Total guaranteed value = USD 14,261,154

7. The external loan, for which the State guarantee is granted has commercial character, is not granted under preferential terms, having quotas of interests and fees

used on the international financial – banking market. The interest afferent to the loan is Libor USD at 6 months + 0,45% p.a.

8. In the turn of the guarantee granted for this loan, the National Company for Radio-communications S.A. pays to the State, represented by the Ministry of Public Finances, a risk fee practiced on the market up to 4% of the guaranteed value, following that each amendment that will interfere at the closure of the contract should be notified

9. The guarantee is time limited. The loan is foreseen to be reimbursed in 20 quarterly equal and consecutive installments payable starting with the 15th of March 2005.

10. The loan contracted with the State guarantee will be reimbursed from own sources of the beneficiary. The analysis of the main economic - financial indicators during 2001-2003 reveals the fact that, the National Company for Radio-communications S.A. is not in financial difficulty.

	2001	2002	2003
turnover (ROL thousands)	1,105,908,710	1,546,267,710	1.675,753,248
Gross profit (ROL thousands)	25,244,044	113,323,133	25,885,463
Profit rate	2.28%	7.33%	1.54%
Patrimony solvability	72.78%	57.88%	54.62%
The rate of the financial autonomy	87%	52%	42%
The indebttness degree	12.73%	47.54%	58.14%

Thus:

During 2001-2003 the company recorded an increasing trend of the turnover with an increase of around 40% in 2002 comparative to 2001 and an increase of 8% in 2003 comparative to 2002.

The gross accounting profit was of ROL 25 billion in 2001 and 2003, recording a high increase in 2002, explained by the appearance of new telecommunication services, under the terms of infrastructure re-technology and attracting new important clients and TELEMobil and GTS.

The solvability records a decreasing trend (72.78% in 2001, 57.88% in 2002 and 54.62% in 2003) due to the increase of the liabilities, mainly to the increase of the loans for investments, but it maintains over the limit of 50%, fact that reveals good patrimony solvability for the company.

The indicator ‘the rate of the financial autonomy’ frames, as well, within acceptable limits.

The indebtedness degree records, as a consequence of loans contracted exclusively for investments that were carried out during 2002 and 2003 in the radio-communications infrastructure of the company, an increasing trend, reaching a relatively high level in 2003 (58.14%). However it should be underlined that it maintains in favorable limits. Under these circumstances, the company can further provide an important volume of investments, as it is foreseen a significant increase of the turnover mainly in the new telecommunication activities and certain older loans reach their final term of payment. We mention the fact that the company does not have overdue obligations to the State budget, local budgets or special funds budget.

As well, the analysis of the loss and profit account, the provisions and the cash flow of the loan reimbursement period reveal the fact that the company will have liquidities for reimbursing the loan.

DECIDES

Art.1. Within the meaning of art. 12 par. (2) let. a) of the Law no. 143/1999 *on State aid, amended and completed by Law no. 603/2003*, read in conjunction with art. 4.2 of the *Guidelines regarding the State aid in the form of guarantees*, the guarantee granted by the State, through the Ministry of Public Finances, for contracting an external loan by the National Company for Radio-communications S.A., does not represent a State aid as it cumulatively fulfills the following conditions:

- the borrower is not in financial difficulty;
- the borrower is, mainly, capable to obtain a loan under market conditions from the financial markets, without any State intervention;
- the guarantee is granted in relation with a precise financial operation, it refers to a maximum determined amount and it is not time unlimited;
- the guarantee involves the payment of an incentive to the market price.

Art.2. The present Decision becomes effective from its communication date.

Art.3. According to the provisions of art. 29 of the Law no. 143/1999 on State aid, with subsequent amendments and completions, the present Decision may be appealed to the Bucharest Court of Appeal, division Contentious Administrative, in 30 days from its communication date.

Art.4. The present Decision shall be communicated by the Secretariat General of the Competition Council to:

- the Ministry of Public Finances, 17 Apolodor Street, sector 1, Bucharest

- the National Company for Radio-communications S.A., 14A Libertatii Boulevard, Sector 5, Bucharest

Art.5. The Secretariat General and the Department for State Aid of the Competition Council shall pursue the fulfilment of this Decision.

PRESIDENT

MIHAI BERINDE