

DECISION No. 164
of 02.06.2004
on the authorization of the individual State aid intended to be granted
to SC MINIERA BANAT SA Anina

THE PRESIDENT OF THE COMPETITION COUNCIL,

Based on:

1. Presidential Decree no. 57/2004 for appointing the Competition Council's members;
2. The provisions of the Competition Law no. 21/1996, published in the Official Gazette of Romania, Part I, no. 88/30.04.1996, with subsequent amendments and completions;
3. The provisions of the Law no. 143/1999 on State Aid, published in the Official Gazette of Romania, Part I, no. 370/03.08.1999, with subsequent amendments and completions;
4. The Regulation regarding the organization, functioning and procedure of the Competition Council, published in the Official Gazette of Romania, Part I, no. 288/01.04.2004;
5. The Regulation regarding the form, content and other details of a State aid notification, published in the Official Gazette of Romania, Part I, no. 125/24.03.2000;
6. The European Union Council Regulation no.1407/2002 on State aid in coal industry, published in the OJ L no.205/02.08.2002;
7. The notification of the intention to grant an individual State aid to SC MINIERA BANAT SA Anina, submitted by the Ministry of Economy and Commerce under Note no.155672/17.03.2004, registered at the Competition Council as no. RS- AS/43/15.04.2004 and became effective on 19.05.2004.
7. The Note of the Directorate for State Aid Authorization regarding the notified State aid.

Based on the following grounds:

1. The concrete way of granting this aid is the financing from State budget funds, through the Ministry of Economy and Commerce, of the investment objective “*Works for the maintenance of the production capacity of 70,000 t/year of EM Anina, Caras – Severin County*”.
2. The State aid will be granted for a 5 years period, respectively 2005-2009.
3. The value of the state aid to be granted SC MINIERA BANAT SA Anina is of ROL 129,893,169,000.
4. SC MINIERA BANAT SA Anina benefited in the past from State aids, as budgetary allocations for new investment objectives, as follows:
 - by the Decision no.496/09.09.2001, the Competition Council authorized the State aid in amount of ROL 34,759,999,000 granted to SC MINIERA BANAT SA Anina for the finalization of the investment objective “Modernization of the system for producing compressed air at EM Anina, in order to reduce the electric energy consumption”. Until present, from the total amount of the State aid authorized by the Competition Council it benefited of ROL 7,000,000,000 in 2003 and of ROL 12,000,000,000 in 2004;
 - by Decision no.433/03.10.2003 the Competition Council authorized a State aid in amount of ROL 76,559,860,000 for financing the investments objective “Works for maintaining the production capacities of EM BAIA NOUA at 40,000 t/year energetic brown coal, by opening the geological stocks under the level 240” out of which, has benefited of ROL 3,000,000,000 in 2004.

The above mentioned State aids are not linked to the investment objective “*Works for maintaining the production capacity of 70,000 t/year of EM Anina, Caras – Severin County*”.

5. The relevant market on which SC MINIERA BANAT SA Anina activates is the energetic brown coal market, and the geographical market is represented by the entire Romanian territory.
6. The assessment of the notified measure was made according to the granting criteria contained by the relevant secondary legislation in the field,

in force within the European Union, represented by the European Union Council Regulation no.1407/2002 on State aid in coal industry.

7. The State aid is linked to the *access to coal stocks – for current production*, in order to maintain the capacity of the mining objective. This means to carry out new mining works for a 5 year period, having a total value of ROL 129,893,169,000 which will insure the access to other exploitable stocks of useful mineral substances, and the planned production level, if the exploited stocks would run dry, being extracted or commercialized.

8. By carrying out the works provided for in the documentation, it is insured the exploitation of coal stocks in the area, for a 5 years period, at a production capacity of 70,000t/year. Therefore, the provisions of art.5 of the European Union Council Regulation no.1407/2002 on State aid in coal industry are fulfilled, the State aid having as objective *the access to the coal stocks*.

9. The unitary cost shall be maintained at the present value, being thus fulfilled the conditions stipulated by art.5 of the European Union Council Regulation no.1407/2002 on State aid in coal industry.

10. Since the production to be further obtain after the investment is completed will not increase, but it will remain at the same level, namely 70,000 t/year, *the internal market will not be affected in terms of quantity and quality and will not generate the distortion of the coal market, of the competition between coal purchasers and its users*. The produced coal, being an energetic brown coal, *would not affect the coals and steel market*.

11. The condition provided for in the European Union Council Regulation no.1407/2002 on State aid in coal industry, as to provide a best economic perspective, is revealed by the technical-economic indicators of the project presented in the documents for investment, according to which for a price of production in value of ROL 1,000, the cost is of ROL 995. Therefore, the exploitation will be profitable and the company will register profit.

12. The information presented in the notification submitted to the Competition Council leads to the conclusion that the notified individual State aid will not significantly affect the normal competitive environment and does not infringe the appropriate application of the international treaties

to which Romania is party. At the same time, the State aid to be granted under the form of financing from State budget funds, through the Ministry of Economy and Commerce, of the investment objective “*Works for maintaining the production capacity of 70,000 to/year at EM Anina, Caras – Severin County*” fulfils the granting criteria, in accordance with the European Union Council Regulation no.1407/2002 on State aid in coal industry.

13. Based on art.13 align.(1) of the Law no.143/1999 on State aid, the Competition Council shall survey the granted State aid, and if it is noticed that the State aid significantly affects the competitive environment and the application of the international agreements to which Romania is party, the Competition Council shall request the State aid grantor to take appropriate measures in order to eliminate its incompatibility with the Law no.143/1999 on State aid and the relevant international agreements.

DECIDES:

Art. 1. Based on art. 12 (2) b) read in conjunction with art.14 para.(1) let. j) of the Law no.143/1999 on State aid, with subsequent amendments and completions, and taking into account that the State aid has as objective the access to the coal stocks under the conditions of maintaining the production capacity, it is authorized the individual State aid intended to be granted to SC MINIERA BANAT SA Anina as State aid in the coal industry, with the compliance of the present decision’s provisions.

Art. 2. The value of the State aid to be granted is of ROL 129,893,169,000.

Art.3. The present Decision becomes effective on its communication date.

Art.4. According to the provisions of art. 24 of the Law no.143/1999 with the subsequent modifications and completions, the State aid grantor shall submit to the Competition Council information regarding the granted State aids, for their inventorying and monitoring.

Art.5. According to the provisions of art. 29 of the Law no.143/1999 on State aid, with subsequent modifications and completions, the present Decision can be appealed by the concerned persons at Bucharest Appeal Court, Administrative Contentious Section within 30 days as of its communication.

Art. 6. The present Decision will be communicated by the Secretariat General of the Competition Council to the following:

- the Ministry of Economy and Commerce, 152 Calea Victoriei, Bucharest;
- SC MINIERA BANAT SA Anina , 2 Hammer Street, Caras- Severin County.

Art. 7. Secretariat General and the Directorate for State Aid Authorization of the Competition Council shall pursue the fulfillment of this Decision.

**PRESIDENT
MIHAI BERINDE**