

D E C I S I O N No. 166
of 02.06.2004
on the notification of the Public Finance Ministry regarding the
financial support granted to the Compania Nationala de Autostrazi si
Drumuri Nationale SA (National Company of Highways and Roads)
(registration no. RS- AS no. 37/08.04.2004)

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 notification of the financial support measure granted to the National Company of Highways and Roads SA (hereinafter CNADN), aimed at the rehabilitation and modernization of the national roads network, submitted by the Public Finance Ministry under Note no.107793/07.04.2004, registered at the Competition Council as no. RS AS 37/08.04.2004, notification which 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:

1. The financial support granted to the CNADN consists in:

- guarantees granted by the State for certain external banking loans aimed at completing the finance designated to finalize the rehabilitation and modernization of the Romanian road network:

 ? Credit granted by Deutsche Bank AG – JPY 6 billion;

 ? External credit in total amount of USD 100 million;

- external loans contracted for:

 ? the Project “National Roads Administration Restructuring and roads rehabilitation”– USD 85.9 million (Loan Agreement between Romania and EBRD);

 ? the Roads Rehabilitation Project II – ECU 70 million (Loan Agreement between Romania and EIB);

 ? the Roads Rehabilitation Project, 5th stage – EURO 240 million (Financing contract between Romania and EIB);

 ? the Highways Rehabilitation and Construction Project – EURO 210 million (Financing contract between Romania and EIB);

- loan in amount of ROL 1,900 billion, granted from the general current account of the State Treasury, to finance the deficit of CNADN for 2003.

2. The financial support is granted under:

 ? the Law no.74/09.05.1997 regarding the approval of GO no.3/1997 for the ratification of the Loan Agreement (Project “National Roads Administration Restructuring and roads rehabilitation”) between Romania and EBRD, signed in Bucharest on November the 20th, 1996 and of the Loan Agreement (Roads Rehabilitation Project II) between Romania and EIB and National Roads Administration, signed in Bruxelles, on October the 23rd 1996 and in Bucharest on October the 25th 1996;

 ? the Law no.86/2003 for the approval of the GEO no.159/2002 regarding the ratification of the Financing contract between Romania and EIB and the National Roads Administration, to finance the Roads Rehabilitation Project, the 5th stage, signed in Bucharest on March the 8th 2002;

- ? the Law no.169/2000 for the approval of the GO no.8/2000 for the ratification of the Financing contract between Romania and EIB and the National Roads Administration, to finance Highways Rehabilitation and Construction Project, signed in Luxemburg on November the 16th 1999 and in Bucharest on November the 19th 1999;
- ? GD no.707/2001 regarding the authorization of the Public Finance Ministry to guarantee an external credit for the Autonomous Regie National Roads Administration and GD no.1225/2001 for amending GD no.707/2001;
- ? GD no.150/2003 regarding an external credit contracted by the Ministry of Public Works, Transports and Housing, guaranteed by the Ministry of Public Finances, necessary to finance the Program “First-stage rehabilitation of National Roads”;
- ? GD no.252/2004 regarding the financing of the deficit of CNADN for 2003.

3. The CNADN has as sole shareholder the Romanian State, represented by the Ministry of Transports, Constructions and Tourism.

4. CNADN carries out activities of national public interest: ; its activity object being as follows:

- to design, construct, modernize, rehabilitate, repair, administrate and maintain the roads of national interest, for a safe road traffic;
- to coordinate a unitary development of the entire network in concordance with the national economic, defense and control needs;
- to set up and charge the taxes owed by transporters for using roads, at border points and other points stipulated by the Law;
- to collect the tariffs and to control the transporters' obligations for using roads, at border points and other points of the national network, as well as at other points established according to the law;
- to draft emplacement agreements and special transport and authorizations to collect afferent tariffs in accordance with the law;
- to control the collected payments and the way in which the tariffs charged for using the national road infrastructure are used;
- industrial activities.

5. There are no competitors for the main activity field of CNADN.

6. CNADN provides the unitary development of the entire national public network by administrating, on commercial principles, the infrastructure of national interest roads, for a safe, fluent and continuous traffic.

7. CNADN coordinates and controls the entire activity of administrating, maintaining, exploiting and repairing of the national roads, as well as the investments, and provides the resources necessary to finance the activities linked by roads and controls their destination. For this purpose it administrates its own funds, funds from the Public Roads Special Fund and funds from the State budget, up to the amounts annually approved by the State Budget Law, as money transfer, organizes the cashing of the roads utilization tariffs, negotiates internal and external credits.

8. The financial support granted to CNADN has as purpose to finance the roads rehabilitation and development of the road infrastructure of national interest as to provide safety traffic conditions, to harmonize the standards regarding roads and bridges with the EU Directives and standards, as well as to develop the roads and bridges network management system.

9. The investments objectives considered are the following:

- primary rehabilitation of the national roads;
- national roads rehabilitation;
- highways;
- bridges;
- projects financed by public- private partnership;
- ring roads for the main cities.

10. The road infrastructure belongs to the public domain of the State and the financial support granted by the State for investments in road infrastructure constitutes an economic measure, for the benefit of the entire national economy.

11. By developing the road infrastructure in Romania it is not created an advantage only to certain undertakings, production of certain goods/services or certain regions, the competition is not distorted and the trade between Romania and the Member States of the European Union is not affected. Therefore, the main elements provided under art.2 para.(10) of the Law no.143/1999 on State aid, with subsequent amendments and completions, for the notified measure to be State aid are not fulfilled.

DECIDES:

Art. 1. Based on art. 8 (2) read in conjunction with art.12 para (2)a) of the Law no.143/1999 on State aid, with subsequent amendments and completions, that the financial support granted to CNADN does not constitute State aid, since its purpose is the development of the Romanian road infrastructure, owned by the public domain of the State.

Art. 2. The present Decision becomes effective at the date of its communication.

Art. 3. The present Decision will be communicated by the Secretariat General of the Competition Council to:

- The Ministry of Public Finances, 17 Apolodor Street, sector 1, Bucharest;
- National Company of Highways and Roads, 38 Dinicu Golescu Blvd, sector 1, Bucharest.

Art. 4. The General Secretariat and the Directorate for State Aid Authorization of the Competition Council shall pursue the fulfillment of this Decision.

PRESIDENT

MIHAI BERINDE