

**DECISION OF THE COMPETITION COUNCIL**  
**No. 168 dated 02.06.2004**  
**regarding the notification of the Ministry of Public Finance referring to**  
**the financial support measure to be granted to**  
**S.C. ELECTROCENTRALE BUCURESTI SA**

**THE PRESIDENT OF THE COMPETITION COUNCIL,**

**Based on:**

1. The Decree no. 57/2004 regarding the appointment of the members of the Competition Council Plenum,
2. The dispositions of the Competition Law no. 21/1996, published in the Official Gazette no. 88/April 30, 1996, Part I, with the subsequent modifications and completions,
3. The dispositions of the Law no. 143/1999 regarding the state aid, with the subsequent modifications and completions, published in the Official Gazette no. 370, Part I, on 03.08.1999;
4. The Regulation for the organization, function and procedure of the Competition Council, published in the Official Gazette no. 288, Part I, on 01.04.2004;
5. The Regulation regarding the form, content and other details of a state aid notification, published in the Official Monitor no. 125, Ist Part, on 24.03.2000.
6. The notification of the intention to grant a financial support measure for SC ELECTROCENTRALE BUCURESTI SA submitted by the Ministry of Public Finance, with the address no.107765/07.04.2004, notification became effective at the date when the information were exact and complete, respectively 26.05.2004.
7. The Note of the State Aid Authorization Department regarding the notified measure.

**Based on the following grounds:**

1. The financial support SC ELECTROCENTRALE BUCURESTI SA is going to benefit of consists in exemption from the payment of delay interests and penalties related to the obligations deed to the budget of the state social insurance, in total amount of ROL 131,403,338,542, from which interests ROL 130,317,168,653 and delay penalties ROL 1,086,169,889.
2. SC ELECTROCENTRALE BUCURESTI SA is a joint stock established by the GD no.1524/2003 following to the restructuring of SC Termoelectrica SA, having as sole shareholder the Romanian state, through the Ministry of Economy and Commerce. The company has as purpose the production and supply of electrical energy, the production, dispatch, transport, distribution and supply of caloric energy by carrying out, with the meeting of the legislation in force, trade operations according to its activity object.
3. SC ELECTROCENTRALE BUCURESTI SA insures the electrical and caloric energy production, according to the licenses issued by the National Agency of Regulating in the Energy Field (NARE) (ANRE in Romanian). According to art.16 align.(1) in the Electrical Energy Law no.318/2003, “the activities and services for which licenses are granted are of public interest, except from those exclusively designated for the own activity of the licensed or authorized person.”
4. The relevant markets of the product are represented on the market of the public service of electrical energy production and the market of the public service of caloric energy production. As far as the relevant geographical market is concerned, the electrical energy produced by SC ELECTROCENTRALE BUCURESTI SA is supplied to the brunches of SC ELECTRICA SA from Oltenia, Dobrogea, Transilvania Nord, Muntenia Sud, and the caloric energy is supplied to the distributors from Bucharest, Craiova, Constantza.
5. SC ELECTROCENTRALE BUCURESTI SA benefited of the granting of an external credit for completing its own financing sources for acquiring natural gas and crude oil at the level of the consumption necessary for the winter 2003- 2004, stipulated in the GD no.846/2003. According to the Decision no.504/08.12.2003, issued by the Competition Council, this guarantee doesn't constitute state aid, as the credit represents a compensation for performing the obligation of service of general economic interest, and, therefore, it doesn't represent an advantage for this undertaking.
6. The electrical energy market and the caloric energy market are regulated markets, the regulation authority for carrying out the activities in this sectors being NARE. The high regulating level of these markets was imposed by the domestic producers'

existing structure and by the necessity of maintaining prices as convenient as possible for the captive consumers.

7. The sale of electrical energy on the regulated market is made at prices approved by NARE, and the price of the electrical energy sold on the competitive market is freely established based on offers (spot market) or at a price regulated by NARE, to the suppliers for captive consumers. The transactions on the spot market are very low, being of approx. 1-3% from the total of the energy consumed at the level of the entire country.
8. An other aspect for regulating the electrical energy market is the fact that all producers are forced, at the request of the National Energetically Dispatcher, to produce the quantity it requests, when the consumption- production balance at national level isn't equilibrated, no matter the manner of making the contracts.
9. From the electrical energy produced by SC ELECTROCENTRALE BUCURESTI SA, 85% is sold through contracts regulated by the energy suppliers (SC ELECTRICA SA brunches) of the captive consumers.
10. SC ELECTROCENTRALE BUCURESTI SA's obligations as electrical and caloric energy producer, according to art.30 in the Electrical Energy Law no.318/2003, are the following:
  - to insure the deliveries of electrical energy, respectively caloric energy produced in co-generation and system technological services, with the fulfillment of the criteria imposed by licenses, contractual clauses and provisions in force;
  - to offer under undiscriminating conditions, the whole available electrical power, as well as system technological services;
  - to maintain a fuel stock at a sufficient level or, after case, a sufficient water stock, for accomplishing the production obligations and supply continuous electrical energy stipulated in the effectual regulations;
  - to conform from an operative point of view, to the transport and system operator 's demands and to establish, by case, own operative management levels.
11. At the time when the payment delays for the obligations deed to the social security state budget were inscribed, the electrical power plants now under the order of SC ELECTROCENTRALE BUCURESTI SA, were belonging to SC Termoelectrica SA. It didn't paid on time the obligations towards the social security budget as it didn't cashed on the counter-value of the electrical energy delivered to SC ELECTRICA SA and of the caloric energy mainly delivered to the distribution companies under the order of the municipalities. Therefore, the total value of the debts on 31.12.2001 was of ROL 11.858 bill., amount much more over the payment obligations unpaid on time by SC Termoelectrica SA to the social security state budget. At its establishment, according to GD no.1524/2003, by the acceptance- delivery protocol, SC ELECTROCENTRALE BUCURESTI SA overtook the obligation for payment of the delay penalties and majorities related to the unpaid budgetary obligations, for the power plants which came under its suborder.

12. In accordance with the NARE provisions, SC ELECTROCENTRALE BUCURESTI SA and SC Termoelectrica SA have to insure the electrical energy requested by the National Energetically System. The delivery contracts for electrical and caloric energy don't allow the interruption of the deliveries for unpayment of energy.
13. Due to the delay in cashing the electrical and caloric energy's value, SC ELECTROCENTRALE BUCURESTI SA was forced to contract internal and external credits exceeding USD 160 mill/year, the interests and the commission relating to them as well as their currency depreciation representing supplementary expenses for the company. The level of those interests, commissions and currency depreciations exceed the value of ROL 1,500 bill., much over the amount representing the exemption from payment of the delay penalties and majorities related to the obligations unpaid at the state social security budget (ROL 131.4 bill).
14. During the period when the obligations to the social securities should have been paid NARE regulated the price for delivering electrical and caloric energy much below the costs, so with losses for the company.
15. Bu the financial support measure consisting in exemption from the payment of delay penalties and majorities related to the obligations unpaid to the state social security budget, granted in the basis of EGO no.40/2002 for recuperating the budgetary arrears, it is accomplished a compensation of the supplementary costs made for performing the obligation of service of general economic interest by SC ELECTROCENTRALE BUCURESTI SA, and therefore, the notified measure doesn't represent state aid.

## **DECIDES**

**Art. 1.** Based on art. 8, align.. (2), corroborated with art.12 align.(2) letter a) in the Law no. 143/1999, of the state aid, with further amendments and extensions, as financial support measure granted to SC ELECTROCENTRALE BUCURESTI SA doesn't constitute state aid as it compensates for the supplementary costs made for performing the obligation of service of general economic interest.

**Art. 2.** This Decision becomes applicable on the date of its communication.

**Art. 3.** This Decision will be communicated by the General Secretariat from within the Competition Board:

- to the Ministry of Public Finance, Apolodor Street no.17, sector 1, Bucharest
- to SC ELECTROCENTRALE BUCURESTI SA ,Bd Lacul Tei no.1-3, sector 2, Bucharest.

**Art. 4.** The General Secretariat and the Department of State Aid Authorization from within the Competition Board will pursue the accomplishment of this Decision.

**PRESIDENT**

**MIHAI BERINDE**