

DECISION nr.180/10.06.2004

regarding the notification of the Ministry of Public Finance on the guarantees granted for external loan contracted by National Railway Passenger Transport Society „CFR - Calatori” S.A.

The President of the Competition Council

Based on:

1. The Decree no. 57/2004 regarding the appointment of the Competition Council;
2. The provisions of the Competition Law no. 21/1996, published in the Official Gazette no. 88, I part on 30.04.1996, with the subsequent amendments and completions;
3. The provisions of the Law no 143/1999 on State aid published in the Official Gazette no. 370/03.08.1999, Part I, with the subsequent amendments and completions;
4. The Regulation on organization, functioning and procedures of the Competition Council, published in the Official Gazette no. 288, Part I, on 01.04.2004;
5. The Regulation on the form, content and others details of the State aid notification, published in the Official Gazette no. 125, Part I, on 24.03.2000;
6. The notification deposited by the Minister of Public Finance by address no. 107379/17.03.2004, registered at Competition Council under RS-AS no.28/19.03.2004 , notification that became effective at the date the information were complete, 04.06.2004 respectively.
8. The note of the State aid Authorization Department.

Based on the following:

1. National Railway Passenger Transport Society «CFR Calatori» is a joint-stock company where the soul shareholder is the Romanian State. Within the meaning of art.4 from GD no 584/1998 regarding the establishing of National Railway Passenger Transport Society «CFR Calatori» SA by reorganizing National Railway Society, the company is in the field of national interest activities,

for public passengers railway transport and meeting the demand of state defense needs. The main activity goal is represented by the public railway transport for passengers, the luggage and parcel post transport, postal transport, military, prisons and others, in specialized wagons, organizing and ensuring the exploitation of sleeping cars, berths, the bar and restaurant, both for intern and international traffic.

2. According art.7 align.(1) from GD no 584/1998 C.F.R. Calatori together with National Railway Society ate „C.F.R.“ - S.A. ensure the safe passengers railway transport from circulation point of view, according to the attributions specified in the law.

3. GD no 850/2003 regarding the interoperability of the conventional railway transport system from Romania with the conventional trans-european transport system sets out the conditions that must be accomplished for interoperability achievement. For accomplishing this goal it is necessary to reach a minimum level of technical armonisation in order to ensure:

- the facilitation, improvement and developing the services of international railway transport with the member states of The European Union and other states;
- the progressive formation of the internal market on the equipment and services related to the modernization and functioning of the conventional railway transport system from Romania;
- the contribution in ensuring the interoperability of the conventional trans-european railway system, the conventional railway transport system meaning the ensemble made up from the infrastructure and the rolling stock designed to circulate on this infrastructure.

The achievement of this goal supposes purchasing and modernizing the rolling stock in order to meet the requirements of the European standards regarding the interoperability.

4. Within the meaning of art.11 from GD no 584/1998, the investments for achievement of projects of national importance, which ensures the integration of Romanian in the European railway transport system, is financed from State budget or credits guarantied by State and payed back from the State budget.

5. The company rolling stock park contains 3178 wagons, from which 30.08% have an age of over 31 years, 39.24% between 21-30 years, 29.23% between 11-20 years, only 1.45% having an age between 0-10 years. Also, the company has 1269 locomotives, from which 395 have over 31 years, 671 between 21-30 years, 164 between 11-20 years and 39 between 0-10 years. Taking in account the fact that the normal usage for locomotives and wagons is for 20 years, to ensure the safety train circulation and passengers comfort conditions, as well as to align to the integration criteria, there was a demand for investments in new or modernized ruling stock.

6. CFR Calatori SA contracted credits guaranteed by The Ministry of Public Finance to finance investments for new wagons and locomotives or for modernizing the existing ones. From the contracted credits from foreign financing banks, with the State guarantee and paid back from State budget are almost finished in the following investments on rolling stock:

- 100 wagons modernized with Alstrom DDF, from BERD and Paribas;
- 44 locomotives modernized with BERD credit;
- 57 locomotives modernized with Deutsche Bank Tokyo credit;
- 120 auto-motors Desiro (50 auto-motors with HVB Bank Munchen and Bank Austria Creditanstalt).

All these credits cover a small number of wagons and locomotives comparative with the existing park to which the utilisation time is overdue.

7. The modernizations and renewal of the rolling stock shall determine a decrease in fuel expenses, in those of maintenance and repairs, as well as improving the transport quality.

8. By adress no. 107379/17.03.2004 The Ministry of Public Finance had notified The Competition Council the support measures for National Railway Passenger Transport Society «CFR Calatori» SA (named from this moment CFR Calatori), measures regulated by the following :

a) Law of Public no 81/1999

b) G.O. no 31/1996 regarding the ratification of the Guarantee Agreement (project related to the rehabilitation of the railway) between Romania and The European Bank for Reconstruction and Development, signed in Bucharest on 23 July 1996, approved through Law no 16/1997, amended GD nr.796/1999.

According to the ordonnance, the credit is calculated for financing the Romanian railway rehabilitation project and it is guaranteed by The Minister of Public Finances.

The credit and its afferent expenses is ensure from the company's own resources.

The credit's amount is of USD 38.646 millions, its paying back period is 10.04.2000-10.10.2011.

c) GD no 217/1999 regarding the authorization of The Inter-ministerial Committee of Guarantees and External Trading Credits for approving 100% the indemnification of an external in favor of Societati Nationale de Transport Feroviar

de Calatori "C.F.R. Calatori" - S.A., as well as the authorization of The Minister of Public Finances to indemnify this credit..

The credit amount is of Euro 31.14 million sand USD 5.78 million.

The paying back period of the credit is 10.04.2002- 10.04.2010.

The paying bck of the due installments, commissions and other expenses for the external loan will be assured from the State Budget,through Ministry of Transport,Construction and Tourism,according with the founds that have been approved yearly for this destination.

The loan is taken for financing the project of modernization 100 wagon. For financing the project, the society has contracted the loan no. 438 From BERD in amount of 14.000.100 USD, that is paid back from its own funds.

(d) GD no. 1029/2000 regarding the guarantee by the Ministry of Public Finances of an external loan vouched for Ministry of Transport, for assuring the funds needed for rehabilitation of Diesel railway engines park of 2100 CP used for assuring public passenger transport services

The loan is made for financing the project regarding the recondition and modernisation of 57 Diesel railway engines of 2100 CP. The amount of the loan is 12.325.000.000 JPY but not more than 100.000.000 USD. The paying back period is 28.09.2004-28.03.2011.

The paying back of the loan, the payments of the commissions and the installments and other expenses for the external loan contract, and the equivalent of the taxes and incoming tax or other expenses made in Romania will be assured from the State Budget through the Ministry of Transport, Construction and Tourism yearly budget, according to the law.

e) G.D. no. 557/2002 regarding the guarantee granted by the Ministry of Public Finance for some external loans for the National Company of Passengers Railway Transport "CFR Calatori" – SA, modified by G.D. no. 937/2002 and G.D. no. 96/2004.

The loan is intended to finance the project of acquiring 120 motorailers type Desiro 20 SR. The loan's value is 283.207 million Euros.

The external loans reimbursement, the payment of the insurance premiums, of the interests, and of the other afferent expenses, as well as the payment of the other financial obligations associated with the development of the contract will be financed from the company's own resources and in completion from the state budget through the budget of the Ministry of Transport, Construction and Tourism, within the limits annually approved for this destination.

f) G.D. no. 936/2003 on contracting a loan by the National Company of Passengers Railway Transport "CFR Calatori" – SA in order to extend the informatic system "Tickets selling and booking for the passengers trains" over the whole railway network in Romania.

The external loan reimbursement, the payment of the insurance premiums, of the interests and of the other afferent expenses will be financed from the company's own resources, inclusively from the state budget allocations, according to the law, through the budget of the Ministry of Transport, Construction and Tourism.

g) the project for the G.D. concerning the approval of the List with the undertakings under the authority of the Ministry of Transport, Construction and Tourism which benefit by the provisions of art. 22 from the Law of the State Budget for 2004 no. 507/2003.

According to this project, SN "CFR Calatori" SA is exempted from the payment of the obligations to the state budget, to the budget of public social insurance, to the budget of the national united health insurance fund and to the budget for public unemployment insurance, for the financial year 2004, including the associated obligations, excepting the obligations due from the holdings back within the limit of 1,017,886 million lei, as a completion for the subventions granted from the state budget. The amounts subjected to the payment exemption are monthly established by the common order of the Minister of Public Finance and the Minister of Transports, Constructions and Tourism and they are registered in the undertaking's book keeping according to the applicable rules.

9. According to art. 9 from G.D. no. 584/1998, the public railway transport of passengers is considered a public social service and for this "CFR Calatori" receives from the state budget or from the local budgets the difference between the tariffs established with the qualified authorities' recommendation and the real transport costs to which it is added a profit share of 3% from those costs. The company aims to improve the railway activity by diminishing the expenses as much as possible maintaining a safe circulation and a certain comfort.

10. The company's sources of income are:

- the equivalent of the railway travels made using the different kinds of travel permits (39.2% during the year 2000);
- budgetary transfers of funds granted in order to cover the difference between the income and the costs involved by the public railway transport (58.7% during the year 2000);
- the extra income obtained from other activities (2.6% during the year 2000).

11. The amounts representing subventions/ transfers of funds for the operation activity granted as a completion for the income, are approved yearly in the budget of income and costs by government decisions, **in order to realize the budgetary equilibrium.**

There are also approved the other funds intended to the reimbursement of the external loans guaranteed by the state, including the payments of interests and other fees.

By the Law of state budget there are approved exemptions from the payment of the obligations due to the state budget.

The evolution of the budgetary subventions/ transfers of funds granted in order to sustain the public railway transport of passengers have been influenced on one hand by the volume of the incomes obtained from the passengers transport, which between 1999-2003 registered a growth of 168.89%, and on the other hand by the extent of the material costs, which during the same period of time registered a growth of 226.62% for the fuel, 245.16% for the electric power and 209.12% for the repairs. For this period of time the subventions/transfers of funds growth is 106.86%.

12. The level for the subvention is sized taking into account the prices known at the date when there are elaborated the budget's project and the official foreseeing regarding the evolution of the inflation. Within these limits first there are secured the costs for the tariff charged for using the infrastructure, the power costs and the repair costs for the circulation safety. During the fulfillment of the budgetary year, the company's costs usually grow with indexes higher than the foreseen inflation that is for the important suppliers of products with a significant share in the costs of the passengers transport .

13. Under these circumstances the company can't constitute its own funds in order to realize full sized investments like those necessary to accomplish the projects of national importance ment to ensure the transportation system. Because of the large value of the investments needed to modernize The company rolling stock park the amounts allocated from the state budget are not sufficient so the main financing source for this investment are the external credits contracted for a long term, refundable from the state budget.

14. "CFR Calatori" SA is the only railway operator in Romania. Presently, on railway passenger transport market, no private undertaking has the capacity to realize the obligation of such a general public service with the social tariff established according to the methodology approved by government decision.

15. In order to apply in a suitable way the European standards which are transposed in the Romanian legislation, it is necessary to renew and modernize the rolling material to ensure the interoperability of the Romanian conventional railway transportation system with the transeuropean one.

16. The investments are as well necessary in order to achieve railway circulation in safety conditions and to ensure the running of the service of general economic interest in normal conditions.

17. Under these conditions:

- the Romanian state is the only shareholder of SC "CFR Calatori" SA;
- the company carries out a service of general economic interest;
- the company also carries out **national interest activities**; in order to **fulfill our country's defense needs**;
- the company is the only operator on the railway passenger transport market;
- the lifetime of the actual rolling material park is
- the renewal and the modernization of the rolling material park are imperative in order to ensure the running of the service of general economic interest in conditions of safety and comfort;
- Romania must ensure the interoperability of its conventional railway transportation system with the transeuropean one;
- the company has an well balanced budget of income and costs, receiving from the state or local budgets the differences between tariffs established with the

qualified authorities recommendation and the real transport costs to which it is added a profit share of 3% from those costs;

- the external loans contracted and guaranteed by the Ministry of Public Finance are ment to finance the projects for renewal and modernization of the rolling material;

- the company doesn't have the financial resources to realize the investment projects for the rolling material renewal and modernization, which are subject of the normative papers notified by the Ministry of Public Finance according to the well- balanced budget.

That is why the financial support consisting of the guarantee granted by the Ministry of Public Finance for the external loans ment to realize the projects for the rolling material modernization and renewal, and of their reimbursement from the state budget represents a compensation for running a service of general economic interest in conditions of safety and comfort.

18. The EEC Treaty stipulates in art.86 (2) that "The rules for the state aid are applicable to the companies which are entrusted with carrying out services of general economic interest or which operates on a regulated market as long as the application of these rules doesn't prevent them to carry out the respective service or activities, neither by fact nor by the law.". As a result, the measures of financial support granted to *the National Company of Passengers Railway Transport „CFR Calatori” SA* do not represent a state aid.

DECIDES

Art. 1 According to art.8 para. (2) corroborated with art. 12 para. (2) lett.a) from the Law no. 143/1999 on the state aid, with its subsequent modifications and completions, the measures of financial support that have been applied for *the National Company of Passengers Railway Transport "CFR Calatori" SA* stipulated in: the Law of Public Debt no. 81/1999; G.D. no. 31/1996; G.D. no. 217/1999; G.D. no. 1029/2000; G.D. no.557/2002; G.D. no. 936/2003, the notified Government Decision project does not represent state aid, because these are compensations granted in order to realize the public service of general economic interest in conditions of safety and comfort and to ensure the interoperability of the Romanian conventional railway transportation system with the transeuropean one.

Art. 2 The present Decision becomes applicable from the date of its communication

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

- the Ministry of Public Finance,
- the Ministry of Transports, Constructions and Tourism

Art. 4 According to the provisions of art. 29 of the Law no. 143/1999 on the state aid, the present Decision can be attacked at the Bucharest Court of Appeal on contentious court in 30 days from its communication.

Art. 5 The General Secretariat and the Department of State Aid of the Competition Council will follow up the fulfillment of the present Decision.

PRESIDENT
MIHAI BERINDE