

ROMANIA
COMPETITION COUNCIL

DECISION NO. 227
of July 29, 2004
on the measure of financial support granted by
the Public Finance Ministry to
S.C. ELECTROCENTRALE DEVA S.A.

THE COMPETITION COUNCIL,

Having in regard the Decree no. 57/2004 on the appointment of the members of the Competition Council Plenum,

Having in regard the dispositions of the Competition Law no. 21/1996, published in the Official Gazette no. 88, Part I, of April 30, 1996, subsequently amended and completed,

Having in regard the dispositions of the Law no. 143/1999 on State aid, published in the Official Gazette no. 370, Part I, of August 3, 1999, amended and completed by Law no. 603/2003,

Having in regard the dispositions of the Europe Agreement establishing an association between the European Communities and their Member States, on one hand, and Romania, on the other hand, ratified by Law no. 20/1993, published in the Official Gazette no. 73/ April 12, 1993, Part I,

Based on the following grounds:

I. PROCEDURE

- (1) By note no. 108054/ May 6, 2004, registered at the Competition Council as no. RS-AS 56/ May 10, 2004, the Ministry of Public Finances notified under Art. 6 of Law no. 143/1999 on State aid, subsequently amended and completed, the State aid financial measure to be granted to SC ELECTROCENTRALE DEVA S.A. The measure represents the guaranteeing by State of an external credit contracted by the company.
- (2) On May 21, 2004 at the headquarters of the Ministry of Economy and Trade a meeting of the Competition Council experts with the

representatives of SC ELECTROCENTRALE DEVA S.A. took place. Within the meeting information necessary for filling out the notification form were requested. After this meeting, phone discussions also took place with the representatives of the company, upon their request, in order to clarify some problems regarding the requested information.

- (3) The requested information has been submitted under Note no. 11867/ May 24, 2004 and no. 12130/ May 27, 2004, registered at the Competition Council as no. DAAS/365/ May 25, 2004 and DAAS/374/ May 31, 2004. The notice became effective on the date the information was correct and complete, mainly on May 31, 2004.

II. DESCRIPTION OF THE MEASURE

2.1. Form of the state aid

The financial aid which S.C. ELECTROCENTRALE DEVA S.A. will benefit from is a State guarantee for an external credit in the amount of USD 69,908,805.43, meant to finance the rehabilitation of the energy group no. 3 of the Heating power Unit Mintia.

2.2 Beneficiary of the measure

The beneficiary of the measure of financial support granted by the State is S.C. ELECTROCENTRALE DEVA S.A. The company was set up by partial unbundling of S.C. TERMOELECTRICA S.A., and became a subsidiary, and an individual legal entity. The registered capital of S.C. ELECTROCENTRALE DEVA S.A. is entirely held by S.C. TERMOELECTRICA S.A. as single shareholder. The company's main activity is the production, supply, sale and buying of electric power and the production, transportation, distribution, supply and sale of heating energy.

2.3 Modality of granting the financial aid measure

2.3.1. In order to rehabilitate the energy sector, the Electricity Public Corporation "Renel" S.A. contracted from the International Bank for Reconstruction and Development a credit amounting USD 110,000,000 (loan 3936-1-RO). This credit was guaranteed by the Romanian State by signing a Guarantee Agreement between Romania and EBRD on August 29, 1995 ratified by GD 41/29.09.1995. Subsequently, upon the request by the Romanian side, USD 33,500,000 were renounced upon, and on October 3, 2000, EBRD reduced the amount to USD 76,500,000.

2.3.2. As a result of the reorganization of the Electricity Public Corporation “Renel” S.A., according to the GO no. 365/1998 the National Electricity Company CONEL was set up, and the ongoing credits held by Renel were taken over by the newly-set up company. Under GO 627/2000, CONEL was dismantled, and its line of business was taken over by S.C. TRANSELECTRICA S.A., S.C. HIDROELECTRICA S.A., S.A. ELECTRICA S.A. and S.C. TERMOELECTRICA S.A.; by partial unbundling of S.C. TERMOELECTRICA S.A., S.C. ELECTROCENTRALE DEVA S.A. was set up as its subsidiary. On May 31, 2002 the agreement to take over loan 3936-1-RO was signed, and the amendment to the agreement to guarantee the loan was approved by GO 584/13.06.2002. Thus, the credit was divided among the five companies, and S.C. ELECTROCENTRALE DEVA S.A. took a part of it.

2.3.3. The Ministry of Public Finances grants guarantee for the whole amount of the external credit taken over by S.C. ELECTROCENTRALE DEVA S.A., including the interest and the relevant expenses. The credit was not granted under preferential terms and is reimbursable in 28 semi-annual tranches starting 2002; the last reimbursement tranche is in 2015. On May 1, 2002, S.C. ELECTROCENTRALE DEVA S.A. reimbursed the first installment amounting to 1,501,343.3 USD, although the guarantee agreement was signed on May 31, 2002.

2.4. State aids received

The company has not received State aids for the last 3 years.

2.5. The necessity of granting the financial support

2.5.1. The rehabilitation program of the energy group no. 3 of the Heating power Unit Mintia is part of the Medium-term National Strategy of energetic development 2001-2004, approved by GO 647/2001 and of “Road Map of Energetic Field in Romania”, approved by GO no. 890/2003.

2.5.2. By granting the financial support measure, the beneficiary will reach the international standards by renewing the existing production installations and increasing the efficiency of the energy groups.

The rehabilitation of the energy group no. 3 of the Heating power Unit Mintia will have the following effects:

- the extension of life time of the energy group with approx. 100,000 functioning hours;

- the increase of electric power from 210,000kW to 234,811 kW;
- the increase of boiler efficiency from 90.07% to 90.7 %;
- The reducing the specific consumption of heat from 1935.0 Kcal/kWh to 1858.5 kcal/kWh;
- observing the environment conditions.

III. ANALYSIS OF THE STATE MEASURE

3.1. The financial support granted by the State to a company supplying a service of general economic interest is not considered a State aid, within the meaning of art. 2 (1) of Law no. 143/1999 on State aid, amended and completed by Law. No. 603/2003 if the following requirements are cumulatively met:

a) the obligation of supplying a service of general economic interest to be entrusted by means of a normative / administrative act and to be clearly defined;

b) to prior establish the parameters based on which the compensation is calculated, in an objective and transparent manner and not to allow the achievement of any economic advantage that might favour the respective economic agent against his competitors;

c) the compensation cannot exceed the amount necessary for the total or partial coverage of the costs resulted from supplying a service of general economic interest, based on the relevant bookkeeping documents and of a reasonable profit;

d) when the company that meets the obligation of service of general economic interest was not appointed by a public auction proceeding allowing the selection of the economic agent capable to supply that service at the lowest costs, the level of the necessary compensation shall be established based on a comparative analysis of the company costs with the costs that an enterprise operating in that field, well managed and having the adequate technical endowment is achieving in order to meet the requirements of a public service of general economic interest and to obtain a reasonable profit.

3.2 The condition from point 3.1 a) is met as follows:

3.2.1. S.C. ELECTROCENTRALE DEVA S.A. does business under licenses granted by the National Regulatory Authority for Energy (ANRE), mainly:

- License no. 405 – for production of electric power
- License no. 406 – for production of heating power
- License no. 446 – for supply of electric power.

3.2.2 Under article 16 (1) of the Electric Power Law 318/2003, 'the activities and services for which licenses are granted are of public interest, except those exclusively meant for satisfying the own consumption of the holder of the authorization or license'.

3.2.3 S.C. ELECTROCENTRALE BUCURESTI S.A. obligations as electric and heating power producer, under article 30 of the Electric Power Law 318/2003, are the following:

- to ensure supply of electricity, and heating power produced in co-generation and the system technological services, while observing the criteria provided under the licenses, the contract clauses and the regulations in force;
- to offer under non-discriminatory terms the whole available electric power, and the system technological services;
- to maintain a sufficient fuel reserve or, by case, a sufficient water reserve, in order to fulfill its obligations of continuous production and supply of electric power as provided under the regulations in force;
- to observe the operation requirements of the transportation and system operator, and to set up, by case, its own steps of operating management.

3.3 The condition from point 3.1 b) is met as follows:

3.3.1. The relevant product markets are the market for the public services of production of electric power and the market for the public service of production of heating power; the relevant geographic market is the whole territory of Romania for electric power, and the Deva municipality for the heating power produced by S.C. ELECTROCENTRALE DEVA S.A.

3.3.2 The electric power market and the heating power market are regulated markets, and the regulatory authority to develop activities in these sectors is ANRE. The high level of regulation on these markets was imposed by the existing structure of the domestic producers and by the necessity to maintain convenient prices for the captive consumers.

3.3.3 The sale of electric power on the regulated market is done at prices approved by ANRE. The price for electric power sold on the competitive market (representing 25% of the total of the energetic market) is set as follows:

- based on offers (spot market)

- upon a price regulated by ANRE to the suppliers of captive consumers

The transactions on the spot market are significantly reduced, and they are around 1-3% of the consumed energy nationwide.

3.3.4 Another feature of the regulated electric power market is that all the producers are bound, upon request by the National Energy Dispatcher, to produce the volumes this unit requests, when the consumption-production balance nationwide is not stable, regardless of the way contracts are performed.

3.3.5 Out of the energy produced by S.C. ELECTROCENTRALE S.A., 75% is sold through regulated contracts towards the energy suppliers (subsidiaries of S.C. Electrica S.A.) of the captive consumers. In order to reduce the risks connected with the excessive variation of prices on the spot market, the producers and the suppliers of the captive consumers may conclude the so-called “difference agreements” where a negotiated price is set up in advance for a certain quantity of energy foreseen to be transacted on the spot market.

3.3.6 Under ANRE regulations, S.C. ELECTROCENTRALE DEVA S.A. is mandatory to ensure the electricity as requested by the National Energy System. The electricity and heating power supply contracts do not allow interruptions of supply for failure to pay the energy.

3.4 The condition from point 3.1 c) is met as follows:

3.4.1 The notified measure of financial support consists of the guarantee by the Public Finance Ministry, on behalf of the State, of the external credit amounting USD 69,908,805. 43, including the relevant interests and expenses, taken over by S.C. ELECTROCENTRALE DEVA S.A. The credit is reimbursable in 29 semiannual tranches starting 2002; the last reimbursement tranche is in 2015. Until present, the company paid in due time all the installments (over USD 8 million), and the relevant interests and fees.

3.4.2 During the period 2002-2003 the company registered profit (ROL 162,474,067 thousand in 2002 and ROL 31,916,259 thousand in 2003) and is capable to reimburse the contracted credit, the interests and the fees afferent to it without the need to reimburse them to the Ministry of Public Finances as guarantor.

- 3.4.3 If the company would not have contracted the external credit with the state guarantee in view of the re-technologization of the Power group no. 3 Mintia, S.C. ELECTROCENTRALE DEVA S.A. could not produce energy at the technical and operation safety parameters required by the National Energy System. Therefore, the support consisting in the guaranteeing by the State of the external represents a compensation not exceeding the costs resulted from the obligation to supply the service of general economic interest.
- 3.5. The condition mentioned at para. 3.1 d) is met as follows: the costs of S.C. ELECTROCENTRALE DEVA S.A. afferent to the production of electric power are comparable with those of its competitors on the relevant market (SC Electrocentrale Turceni SA, SC Electrocentrale Rovinari SA, SC Electrocentrale Bucuresti SA and SC Termoelectrica SA) in Romania, in Romania the activities of production, transport and distribution of the electric power being carried out within the framework regulated by the National Energy Regulatory Authority (ANRE).

Taking into account also the dispositions of art. 3 of Law no. 143/1999 on State aid, amended and completed by Law no. 603/2003, according to which the service of public economic interest means that service supplied against payment, for which there are obligations imposed by the public authorities regarding the access of consumers in a non-discriminatory way and/or other obligations imposed,

DECIDES

Art. 1. It finds that the conditions imposed for the requested financial support not to qualify as State aid are cumulatively met; therefore it cannot affect the normal competitive environment as well as the commerce with the Member States of the European Union.

Art. 2. Based on art. 8 (2) read in conjunction with art. 12 (2) a) of Law no. 143/1999 on State aid, subsequently amended and completed, the measure of financial support granted to S.C. ELECTROCENTRALE DEVA S.A. does not represent State aid.

Art. 3. This Decision becomes effective at the date of its communication.

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

- The Ministry of Public Finances, 17 Apolodor St, sector 1, Bucharest;
- S.C. ELECTROCENTRALE DEVA S.A., 1 Santierului St., Mintia, county Hunedoara, code 2733.

Art. 5. The Secretariat General and the Department for State Aid Authorization of the Competition Council shall supervise the fulfillment of this Decision.

PRESIDENT
MIHAI BERINDE

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