

**DECISION No. 228**  
**of July 29, 2004**

**Regarding the Measure of Financial Support Granted by the Ministry of  
Public Finances to S.C. TERMOELECTRICA SA**

**THE COMPETITION COUNCIL,**

Having in regard the Decree no. 57/2004 regarding 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/April 30, 1996, Part I, with further amendments and completions,

Having in regard the dispositions of the Law no. 143/1999 on State aid, published in the Official Gazette no. 370/August 3, 1999, Part I, with further amendments and completions,

Having in regard the dispositions of the Europe Agreement instituting an association between Romania, on one hand and European Communities and their Member States, 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) Under Note no. 107794/April 7, 2004, registered at the Competition Council as no. RS-AS 38/April 08, 2004, the Ministry of Public Finances notified, under art. 6 of the Law no. 143/1999, on State aid, with further amendments and completions, the measure of financial support that will be granted to S.C. TERMOELECTRICA S.A. The measures consists of the State's guarantee for some external credits contracted by the company, as well as the grant of a loan from the availabilities of the

general current account of the State's Treasury in the exclusive purpose of reimbursing another loan.

- (2) Under Note no. DAS/259/April 23, 2004, supplementary information was requested. The Ministry sent information under Note no. 686837/April 28, 2004 registered at the Competition Council as no. RG 1906/May 4, 2004. On May 21, 2004, a meeting between the experts of the Competition Council and representatives of S.C. TERMOELECTRICA S.A. took place at the headquarters of the Ministry of Economy and Commerce. On that occasion, supplementary information was requested, based on art. 6, par. (4) of Law no. 143/1999, with further amendments and completions, in order to complete the notification form.
- (3) The information requested was sent under Note no. 9206/June 1, 2004, registered at the Competition Council as no. DAAS/390/June 2, 2004. The notification became effective at the date the information was exact and complete, mainly on June 2, 2004.

## **II. DESCRIPTION OF THE MEASURE**

### **2.1. Form of the State Aid**

The financial support that S.C. TERMOELECTRICA S.A. benefits from is granted under these forms:

- guarantees granted by the State, in view to obtain some external bank loans for the finalization of the financing intended to rehabilitation, modernization and re-technology of some groups of producing electric and thermal power in order to generate and efficiently supply and in full security the electric and thermal power and development of the power sector. The contracted credits are guaranteed 100% on behalf of the State, by the Ministry of Public Finances.
- loan granted to S.C. TERMOELECTRICA S.A. from the availabilities of the general current account of the State's Treasury in the exclusive purpose of reimbursing another loan

### **2.2. Beneficiary of the State's Support**

**2.2.1.** The beneficiary of the State's support is S.C. TERMOELECTRICA S.A., a stock company, set up by the reorganization of the COMPANIA NATIONALA DE ELECTRICITATE (National Company of Electricity) S.A., based on the GD no. 627/2000, whose capital in value of ROL 5,181,798,956,000 is held entirely by the Romanian State, as sole shareholder, through the Ministry of Economy and Commerce. S.C. TERMOELECTRICA S.A.'s object of activity is to produce and supply electric power, to produce, dispatch, transport, distribute and supply thermal power, by concluding trade documents corresponding to its object of activity, complying with the legislation in force.

**2.2.2.** S.C. TERMOELECTRICA S.A. has in present three branches that produce power (S.C. ELECTROCENTRALE BUCURESTI S.A., S.C. ELECTROCENTRALE DEVA S.A., S.C. ELECTROCENTRALE GALATI S.A.), 12 maintenance and reparation branches, and 5 subsidiaries, among which 4 companies produce power (Braila, Doicesti, Borzesti and Paroseni). The branches of S.C. TERMOELECTRICA S.A. have its own legal personality.

### **2.3. Modality of Granting the Financial Support**

**2.3.1.** By Governmental Ordinance no. 6/1996 for the ratification of some agreements for external loans and guarantees, approved by the Law no. 60/1996, the Loan Agreement between Romania and European Bank of Investments and Autonomous Electricity Administration RENEL was concluded, for financing the Project of Thermal Power Sector Rehabilitation, the value of the contracted credit being of ECU 60 million.

**2.3.2.** The purpose of the Project consists of the rehabilitation and modernization of some groups that produce electric power, and of some equipment from the domain of electric power transport and distribution. The following are taken into account for the electric power production:

- Bucuresti-Sud (Units 3 and 4) – rehabilitation
- Palas (Units 1 and 2) – rehabilitation
- Braila (Unit 1) – rehabilitation
- Brazi (Unit 8) – rehabilitation

**2.3.3.** Subsequent to the Reorganization of the Autonomous Electricity Administration RENEL S.A., based on the GD no. 365/1998, the COMPANIA NATIONALA DE ELECTRICITATE S.A. (CONEL) was

set up, the credits of RENEL S.A. being taken over by the newly-founded company. Based on the GD no. 627/2000, the COMPANIA NATIONALA DE ELECTRICITATE S.A. was dissolved, its object of activity being taken over by S.C. TRANSELECTRICA S.A., S.C. TERMOELECTRICA S.A., S.C. HIDROELECTRICA S.A. and S.C. ELECTRICA S.A.. Subsequent to this reorganization, each newly founded company took over a part of the credits of the former National Company of Electricity, depending on the objectives established in the Loan Agreements and depending on the object of activity specific to each company.

**2.3.4.** S.C. TERMOELECTRICA S.A. took over, based on the above-mentioned Loan Agreement a credit in value of USD 27,677,410.40, having as object the rehabilitation of the Groups 3 and 4 from CET Bucuresti Sud. This credit contracted from the European Bank of Investments is guaranteed by the Ministry of Public Finances, in percentage of 100% and in present, it is entirely withdrawn. The period of credit reimbursement is April 30, 2001 – October 31, 2010.

**2.3.5.** By Governmental Ordinance no. 6/1996 for the ratification of some agreements for external loans and guarantees, approved by the Law no. 60/1996, the Loan Agreement between Romania and European Bank of Investments and Autonomous Electricity Administration RENEL was concluded, in value of ECU 78.1 million, signed in London on November 10, 1995, which had as main objective the continuation of the Project of Thermal and Electric Sector Rehabilitation. Based on the GD no. 627/2000, regarding the reorganization of the Company of Electricity S.A. (CONEL), S.C. TERMOELECTRICA S.A. took over an external credit in value of EUR 39,442,792.56, guaranteed in percentage of 100% by the Ministry of Public Finances in view to rehabilitate the Group 1 CET Braila. The period of credit reimbursement is August 22, 1999 – February 22, 2009.

**2.3.6.** According to the Guarantee Agreement concluded between Romania and the International Bank for Reconstruction and Development, signed at Washington on August 29, 1995, ratified by the Governmental Ordinance no. 41/1995, modified by the GD no. 584/2002 for the approval of the amendments agreed in Bucharest on May 31, 2002, between the Government of Romania, through the Ministry of Public Finances and the International Bank for Reconstruction and Development at the Guarantee Agreement concluded between Romania and the International Bank for Reconstruction and Development, signed at Washington on August 29, 1995, the Electricity Autonomous Administration RENEL contracted an

external credit of USD 100 million guaranteed, in behalf of the State, in percentage of 100% by the Ministry of Public Finances. The State guarantees unconditioned the proper and due payment of the capital, interests and fees of the loan and bonus, if the case may be, on the anticipated payment of the loan and the accomplishment of all the other obligations of the Borrower (RENEL). The purpose of contracting this credit is the rehabilitation and modernization of the power sector, respectively of the rehabilitation and modernization of the unit Deva Thermal and Electric Power Station.

**2.3.7.** Based on the GD no. 365/1998 and GD no. 627/2000, S.C. TERMOELECTRICA S.A. took over the external credit from the Autonomous Regie - CONEL S.A. After the reorganization of S.C. TERMOELECTRICA S.A., the beneficiary of the external credit became Centrala Termoelectrica Deva (Deva Thermal and Electric Power Station). S.C. TERMOELECTRICA S.A. had still to pay the amount of USD 1,438,450.45. The amount was totally drawn, the credit reimbursement being paid in the period May 1, 2002 – November 1, 2015.

**2.3.8.** Based on the GD no. 341/2004, a loan is granted, from the availabilities of the general current account of the State's Treasury to S.C. TERMOELECTRICA S.A., in value of ROL 6,700 billion, in the exclusive purpose of reimbursing the loan for one year, agreement concluded based on the GD no. 250/2001 and GD no. 1200/2001 by S.C. TERMOELECTRICA S.A. in view to complete the financial resources for import of crude oil, black oil, energetic coal and natural gas, necessary for the winter period 2000-2001.

## **2.4. Received State Aid**

**2.4.1.** According to the data presented in the notification, S.C. TERMOELECTRICA S.A. also benefited from the following support measures from the State:

- a) a financial aid as guarantee granted by the Ministry of Public Finances, on behalf of the State, to this company, for contracting an external bank credit in value of USD 40 million for S.C.P.E.E.T. TERMOELECTRICA S.A., respectively of maximum USD 160 million for the branch S.C. ELECTROCENTRALE BUCURESTI S.A., in view to complete the financing of the purchase of energetic resources from the country and from import, for the winter of 2003-

2004 and of the deliveries from the period July-September 2003, for the set-up of the existent stocks. By the Decision no. 503/December 8, 2003, the Competition Council decides that that financial support, respectively the guarantee granted by the Ministry of Public Finances on behalf of the State for the external credit, did not represent a State aid;

- b) the company also contracted, based on the GD no. 875/August 16, 2002 regarding the guarantee given by the Ministry of Public Finances for some external credits in favor of the trading company of Electric and Thermal Power Production TERMOELECTRICA SA, Bucharest, in view to complete the financing of the purchase of energetic resources for the winter of 2002-2003 in the limit of the amount of USD200 million, extended with the Decision no. 1359/2002 for the amendment of the provisions of the GD no. 875/2002 regarding the guarantee given by the Ministry of Public Finances for some external credits in favor of the trading company of Electric and Thermal Power Production TERMOELECTRICA SA, Bucharest. The Ministry of Public Finances guarantees these credits in percentage of 100%;
- c) based on the GD no. 756/2001 regarding the approval of the guarantee in percentage of 100% of some external credits in total value of maximum USD 400 million in favor of S.C.P.E.E.T. TERMOELECTRICA S.A. for the payment of the purchases of fuels necessary for the functioning of the National Power System, as well as for guaranteeing these credits by the Ministry of Public Finances. The Ministry of Public Finances guarantees, on behalf of the State, the credits and costs afferent to those;
- d) based on the GD no. 205/2001 regarding the guaranteeing by the Ministry of Public Finances of an external loan contracted by S.C. TERMOELECTRICA S.A. as an emission of denominated obligations in EUR on the external capital market and of the GD no. 1200/2001 regarding the guaranteeing by the Ministry of Public Finances of some external credits in total value of USD 185 million, for S.C. TERMOELECTRICA S.A., in view to complete the financing of the imports of power resources for the winter 2000-2001, S.C. TERMOELECTRICA S.A. contracted a credit in view to purchase fuels;
- e) based on the GD no. 509/1998, modified by the Governmental Emergency Ordinance no. 78/2002, S.C. TERMOELECTRICA S.A. contracted 2 external credits guaranteed by the Ministry of Public

Finances, which had as objective the conversion from earth coal to pit coal of the boilers from CET Iasi 1 and 2 and CET Suceava 1 and 2. Under Note no. 638/December 17, 2003, the Competition Council sent to the Ministry of Public Finances the project of the list with the laws that contain measures which do not fall under the Law no. 143/1999 with further amendments and completions, in this address being also contained the GD no. 509/1998. Regarding this law, the Competition Council's point of view was the following: *"As the loan is intended to the modernization of the local power system, part of the public domain, the guarantee given by the Ministry of Public Finances afferent to this loan does not constitute a State aid"*.

f) the company also benefited from the following facilities:

Legal base	Nature	Cumulated	2000	2001	2002	2003
GD no. 1171/2001	Exemption from the payment of supplementary charges for payment delay owed to the social insurance budget	12,909,436,000	0	0	12,909,436,000	0
Order of the ANOFM no. 480/2001	Exception from the payment of overdue contributions to the unemployment budget	233,513,000	0	0	233,513,000	0
GEO no. 125/2001	Rehabilitation of the power station group Minitia-Deva	263,620,722,643	0	263,620,722,643	0	0

**2.4.2.** The credits mentioned at the points a), b), c) and d) are intended to the financing the purchase of the yearly power resources necessary to the production of electric and thermal production. These guarantees are issued by the Ministry of Public Finances for the same objective stipulated by Competition Council's Decision no. 503/2003, not being State aids.

## **2.5. Necessity of Granting the Financial Support**

**2.5.1.** S.C. TERMOELECTRICA S.A. performs a service of general economic interest for the National Power System to function in safety. The measures of financial support were granted in order to rehabilitate and modernize the existent capacities of producing electrical and thermal power and/or to develop new capacities in conditions of making the production efficient.

**2.5.2.** The objectives of the Investments Projects financed from the external credits contracted by S.C. TERMOELECTRICA S.A. are:

- to support the thermo-power sector of Romania, which insures approximately 60% of the electric power consumption;
- the need of improving the technical performances (consumption, outputs) and of the safety in exploitation, by developing some competitive structures in the context of integrating the national power system within the regional and European one;
- the fulfillment of the environmental obligations at European norms, in such a way so that the generating groups in function, based on fossil raw materials, may fulfill the environmental requests until 2012, and the new groups may be achieved with environmental technologies, at European requests;
- the accomplishment of the private investments in the production sector of the thermo-electric power, in accordance with the international agreements assumed, in a high competitiveness climate, in an energetic market in progress of opening and liberalization

### **III. ANALYSIS OF THE STATE'S SUPPORT MEASURE**

**3.1.** The financial support granted by the State to a company that performs general economic services, is not considered a State aid, as provided under art. 2, par. (1) of the Law no. 143/1999 on State aid, amended and completed by Law no. 603/2003, if the following conditions are cumulatively fulfilled:

- a) the obligation to perform services of general economic interest must be entrusted by a law/administrative act and must be clearly defined;



- b) the basic parameters based on which the compensation is calculated must be established in advance, in an objective and transparent manner and must not allow the achievement of an economic advantage that would give preferentiality to the respective economic operator against its competitors;
- c) the compensation must not exceed what is necessary for the total or partial covering of the costs resulted from performing general economic services, based on the relevant accounting documents and on a reasonable profit;
- d) when the company that accomplishes the obligation of general economic services was not appointed in a procedure of public auction that allows the selection of the economic operator able to supply those services at the lowest costs, the level of the necessary compensation must be decided based on a comparative analysis of the company's costs to the costs that another company working in the same domain, well managed and having adequate technical equipment, would have obtained, so that it may be able to accomplish the demands necessary to a public service and to record a reasonable profit.

**3.2.** The condition from paragraph 3.1., letter a) is met as follows:

- 3.2.1. S.C. TERMOELECTRICA S.A. carries out its activity of electric power production, based on the License no. 400, granted by the National Regulatory Agency for Energy (A.N.R.E.). Under paragraph 21 of the License, the following are specified: *"for complying with the obligations assumed by the portfolio agreements, the holder of the license will set up safety stocks of solid and liquid fuel, thus dimensioned so that to ensure the functioning of the units of electric power production for a period established according to the legal provisions and, by firm agreements, the necessary of gaseous fuel for a period of minimum 3 months of their functioning"*.
- 3.2.2. According to art. 16, par. (1) of the Law of Electric Power no. 318/2003, *"the activities and services licensed are of public interest, except for those that are intended exclusively to the satisfaction of the own consumption of the holder of license"*.

3.2.3. The obligations of S.C. TERMOELECTRICA S.A., as a producer of electric and thermal power, according to art. 30 of the Law of Electric Power no. 318/2003, are the following:

- to ensure the deliveries of electric power, respectively thermal power, produced in co-generation and system technological services, complying with the criteria imposed by licenses, contractual clauses and regulations in force;
- to offer the whole electric power available, as well as the system technological services, in non-discriminatory conditions;
- to keep a sufficient fuel reserve or, by case, a sufficient water reserve, for accomplishing the continuous electric power production and supply obligations, foreseen by the regulations in force;
- to conform, from the operative point of view, to the demands of the transport and system operator, and to set up own stages of operative management, according to the case.

**3.3.** The condition from paragraph 3.1., letter b) is accomplished as follows:

3.3.1. The electric and thermal power markets are regulated markets, the regulatory authority for the activities carried out in these sectors being A.N.R.E. The high regulation level of these markets was imposed by the existent structure of the producers from the country and by the need of keeping convenient prices for the receiving consumers.

3.3.2. The sale of electric power on the market is done at prices approved by A.N.R.E. and the price of the electric power sold on the competitive market is fixed freely based on offers (spot market) or at a price regulated by A.N.R.E. to the supplies of the receiving consumers. The transactions on the spot market are very low, being of about 1-3% of the total power consumed at the level of the country.

3.3.3. Another regulation aspect of the electric power market is the fact that all the producers have to produce the qualities requested by the National Power Dispatcher, when the balance between consumption and production is not at poise, at the country level, regardless the way of fulfilling the contracts.

- 3.3.4. Subsequent to the restructuring process, S.C. TERMOELECTRICA S.A. took over from the former National Company of Electricity (CONEL) a loss of over ROL 3,700 billion. Subsequent to the restructuring process, S.C. TERMOELECTRICA S.A. remained the holder of all the payment obligations and losses registered during the time, by the entities that alienated from this one, so that, on that date, the company's cumulated loss is over ROL 16,600 billion.
- 3.3.5. Due to the difficult financial situation, S.C. TERMOELECTRICA S.A. cannot ensure from own sources the financing of the investments necessary to have enough power to make the National Power System function safely. Consequently, the Romania's Government guaranteed a several credits for investments and for rehabilitating the production capacities.
- 3.3.6. At the moment of granting the BIRD loan, the bank made STAFF APPRAISAL REPORT No. 13887/RO dated August 9, 1995, which represents its report of evaluating the "Project" containing the Reform Program of the Power Sector, the thermal stations' rehabilitation program and the restructuring program of RENEL, which had more financing sources (BIRD, BERD, BEI). According to this evaluation report made by the World's Bank, under Chapter E, "Financial Prognoses", paragraph 4.20, it was stipulated that the average tariffs for the electric power should be kept at about USD50/MWh.
- 3.3.7. The feasibility studies made for rehabilitating some thermal and electric stations foresaw production costs and sale tariffs of the power so that the contracted credits might be reimbursed out of the earned profit. Due to the data regarding the fuels' cost, which changed depending on the price evolution on the fuel market, the power tariffs were regulated according to the state's policy, S.C. TERMOELECTRICA S.A. did not earn profit, therefore the company credits could not reimburse the credits.
- 3.3.8. The guarantee given by the State for the credits contracted by the company and the loan granted from the availabilities of the general current account of the State's Treasury in the exclusive purpose of reimbursing another loan, represent a compensation of the failure to earn the profit estimated before, based on the previous calculation made by the World's Bank when the company contracted these credits.
- 3.4.** The condition of paragraph 3.1., letter c) is accomplished as follows: this compensation does not exceed the costs resulted from the obligation of

performing the services of general economic interest, this being proven mainly by the financial-economic results obtained by the company, according to the accounting balances for the period 2001-2003. S.C. TERMOELECTRICA S.A. recorded in 2001 a loss of ROL 3,202,357,264 thousand, in 2002 of ROL 5,033,087,001 thousand, and on June 30, 2003, the loss was of ROL 834,893,353 thousand.

- 3.5.** The condition of paragraph 3.1., letter d) is accomplished as follows: the costs of S.C. TERMOELECTRICA S.A. afferent to the production of electric power are comparable to the ones of its competitors on the relevant market (S.C. ELECTROCENTRALE TURCENI S.A., S.C. ELECTROCENTRALE ROVINARI S.A., S.C. ELECTROCENTRALE DEVA S.A., S.C. ELECTROCENTRALE BUCURESTI S.A.) in Romania, the activities of electric power production, transport and distribution being carried out according to the regulations of the National Regulatory Agency for Energy (A.N.R.E.).

Also seeing the dispositions of art. 3<sup>8</sup> of the Law no. 143/1999 on State aid, amended and completed by Law no. 603/2003, according to which, services of general economic interest mean the services performed under market conditions 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 is noticed that there are cumulatively fulfilled the conditions necessary for the requested financial support not to be considered a State aid, therefore, it may not affect the normal competitive environment as well as the trade with the Member States of the European Union.

**Art. 2.** Under art. 8, par. (2) read in conjunction with art. 12, par. (2) letter a) of the Law no. 143/1999, on State aid, with further amendments and completions, the financial support granted to S.C. TERMOELECTRICA S.A. does not represent a State aid.

**Art. 3.** This Decision becomes applicable 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 Street, sector 1, Bucharest
- S.C. TERMOELECTRICA S.A, 1-3 Lacul Tei Blvd., sector 2, Bucharest

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

**PRESIDENT  
MIHAI BERINDE**