

RESOLUTION No.245
Of date 6th of august 2004

Regarding the notification of the Public Finance Ministry referring to the guarantee to be given to the National Radio-communication Society S.A.

THE COMPETITION COUNCIL,

Considering the provisions of the Decree no. 57/2004 for the appointment of the members of the Competition Council;

Considering the provisions of the Competition Law no. 21/1996, published in the Official Gazette of Romania no. 88, Part I, of the 30th of April 1996, modified and completed by the Government Urgency Ordinance no. 121/2003 approved by the Law no. 184/2004;

Considering the provisions of Law no. 143/1999 regarding the state aid, published in the Official Gazette of Romania no. 370, Part I, of the 3rd of August 1999, modified and completed by Law no. 603/2003;

Considering the provisions of the European Agreement instituting an association between Romania, on the one hand, and the European Communities and member states of these, on the other hand, ratified by Law no. 20/1993, published in the Official Gazette of Romania no. 73, Part I, of the 12th of April 1993,

Based on the following arguments,

I. The Procedure

(1) By address no. 108.177/24th of May 2004 registered at the Competition Council under RS-As no. 58/26th of May 2004, the Public Finance Ministry transmitted the notification on the individual state aid to be given to the National Radio-communication Society S.A.

(2) The notification was drawn up according to the provisions of the *Regulation regarding the manner, content and other details of the notification of a state aid*.

(3) By the DAAS no. 406/9th of June 2004, respectively DAAS no. 437/23rd of June 2004 supplementary information was requested referring to the conditions in which the guarantee is given as well as the level of the paid bonus by the National Radio-communication Society S.A. The notification became effective on the date of the 13th of July 2004.

II. The legal base for offering the financial support

- The Public Debt Law no. 81/1999;
- The Governmental Decision no. 1534/2003 regarding the guaranteeing by the Public Finance Ministry of an external loan in total amount of up to the equivalent of 70 million US dollars, contracted by the National Radio-communication Society SA. for the update in technology of the radio-communication equipment.

III. International agreements which Romania is part of, and which are relevant for the domain in which the support measure is offered

- The European Agreement concluded between the European Community and the member states on the one hand and Romania on the other hand: art. 64 paragraph 1 (iii) regarding the state aid;
- The Regulation of Radio-communications revised and adopted by the World Conference of Radio-communications in 1995;
- Regional agreements which Romania is part of:
 - The Geneva Plan – radio broadcasting stations with MF in the 68-73 MHz band;
 - The Regional Agreement in Stockholm – contains the frequency plans for:
 - radio broadcasting stations with MF in the 66 – 68 MHz band; television stations in VHF band (the 84 – 1000 MHz and 174 – 320 MHz band); television stations in the UHF band (the 470 – 790 MHz band). The frequency plans refer to analogical television stations which ensure, given certain regional variations, three or four national television coverage in most of the European countries (in the case of Romania – a national network in the VHF band and two national networks in the UHF band).
 - The Chester Agreement 1997 determines the methodology and technical criteria of ensuring the compatibility between the classical analogical television and the digital one;
 - The Regional Agreement in Geneva 1984 contains the Frequency Plan for the Radio broadcasting stations with MF in the 87.5 – 108 MHz band. This plan ensures a number of 4 – 6 radio networks of national radio broadcasting coverage in most of the European countries. In Romania, only 2, 3 such networks can be ensured because, both in our country as well as in the neighboring countries in the North and in the East they still use the 4 and 5 TV channels which are overlapping with the 87.5-100MHz band;
 - The Conference in Wiesbaden 1995 – The documentation contains the planning of the T-DAB system (Terrestrial Digital Auto Broadcasting) in Europe. The Conference determined two allocation priorities: in the VHF band – the TV channel 12 (223-230 MHz) and in the L band (1452-1467, 5 MHz). Due to the intensive development of the T-DAB system in Europe, there arose the necessity for the use of a new spectral resource (1467, 5-1492 MHz).

IV. The Presentation of the National Radio-communication Society S.A.

- (4) The National Radio-communication Society SA. was founded in the year 1998 according to the Governmental Decision no. 372/1998 by the reorganization of the Autonomous Administration of Radio-Communications S.A. It is a juridical person, joint stock company having its whole capital owned by the state, which functions based on economical administration and financial autonomy. The registered capital of the company on the 31st of December 2003 was ROL 1.463.088.992.728.
- (5) According to art. 4 of the Decision for the constituting of the National Radio-communication Society SA, "The National Radio-communication Society operates in the field of telecommunications, having as main object of activity the transport and broadcast of national radio and television programs by radio means as services of national public interest as well as other services in various frequency bands allotted for this purpose based on the legislation and the licenses and authorizations awarded by the Ministry of Communications or any other competent organ."
- (6) The National Radio-communication Society S.A. is the only national operator of public interest in the field of radio-communications, according to art. 1 paragraph (3) of the Constitutive Act of the society, mainly ensuring the broadcast of radio programs and public television in and outside Romania.
- (7) The main object of activity of the National Radio-communication Society S.A. consists of:
- performing and commercializing communication services;
 - maintenance and exploitation, development and modernization of the national system of radio-communications (own networks of radio relays, radio-broadcasting, television, mobile radio communications, communications by satellite and telephone networks of radio connection to the public commuted network);
 - organizing the necessary radio-communication services to the national system of operation and national security under the terms of the law;
 - ensuring the activity of signatory in the international satellite communications organizations which Romania is part of;
- (8) The National Radio-communication Society S.A. administrates and exploits its own infrastructure for broadcasting the national programs of radio-broadcasting and television as unique supplier/ operator of radio-communication services all throughout the territory of Romania. Thus, according to art. 4 paragraph (4) of the Constitutive Act of the society, the society has as main object of activity in the field of radio-communications:
- (1) services:**
- (a) the administration and exploitation of its own infrastructure for the broadcasting of national radio-broadcasting and television programs as unique supplier/ operator of services;
 - (b) broadcasting radio and television programs of third parties;
 - (c) teletext services, RDS, etc.;
 - (d) TDAB, DTVB digital radio and television services, etc.;

- (e) administration and exploitation of its own infrastructure of radio relays for the implementation of other types of communications;
- (f) mobile services of telecommunications such as GSM, DCS 1800, NMT;
- (g) maritime radio-communication services;
- (h) services having added value of radio type, VSAT, data transmission, mobile radio-telephony, Internet;
- (i) design, constructions, commissioning, exploitation and maintenance of radio-communication equipment and auxiliary equipment for it;
- (j) utilization of the frequency spectrum allotted for the radio-broadcasting services on national level and for the terrestrial and space radio-communication services;
- (k) services of communication via satellite, by ensuring the access to the communication satellites and ensuring, as signatory, the space segment for users;
- (l) courses and programs of professional improvement and reconversion in the field of communications;
- (m) consultancy in communications, studies and researches regarding the administration and development of the national system of radio-communications and for the improvement of the performance quality;
- (n) correlating the national system of radio-communications with the other systems of communications in Romania and outside Romania;
- (o) transmission services for any type of communications, ensured by their own equipment;
- (p) any other type of radio communications, according to the valid legal regulations;

(2) commercialization

- (a) communication services conducted through any satellite communication system, by respecting the regulations of the international organizations which Romania is part of;
- (b) equipment, spare parts, ensembles and sub-ensembles of communications from the production line of third parties;

(3) import – export, including clearing, barter, leasing, export and transit type operations:

- (a) products of the telecommunication industry (equipment, devices, spare parts), electric and electronic;
- (b) radio and television programs;

(4) production of:

- (a) radio-communication equipment, plants, information transmission devices, measuring devices, including repairs;
- (b) audio-visual production in its own studios;
- (c) fitting, adjustment, measurements and services in and outside Romania;

- (9) The relevant market on which the society activates is represented by the transport and national programs of television and radio broadcasting market;
- (10) The National Radio-communication Society S.A. holds an important portfolio of clients, out of which we mention:
- (a) for broadcasting: The Romanian Radio Broadcasting Society, The Romanian Television Society;
 - (b) for telecommunications:
 - internet: A.N.R.C, Telemedia Chisinau, I.G.C.T.I, Sofwin;
 - VPN: Transgaz Medias, Astral Telecom, A.N.R.C;
 - communication integrated services (telephony and internet): Estera Chemicals, RARTEL, 3A Trading;
 - rented lines: Astral Telecom, GTS, Telemobil;
 - show transmission: Media Pro, Amerom S.A., Antena 1.
- (11) The main competitors for each type of services of the National Society for Radio-communications S.A. are:

No.	Type of service performed	Competitors
1.	Transport and broadcasting of the programs of the Romanian Society of Radio Broadcasting, The Romanian Society of Television	No competitor. The National Radio-communication Society S.A. is the only provider of such services.
2.	Renting locations and aerial supports	No competitor. The National Radio-communication Society S.A. is the only provider of such services.
3.	Rented lines	RomTelecom S.A., Orange, CFR, RDS
4.	Private virtual networks (VPN)	Mobifon S.A., ArTelecom, GTS Telecom
5.	Internet	RDS, Astral Telecom, ArTelecom, GTS Telecom, PC NET, Euroweb, Mobifon S.A.
6.	Occasional transmissions	No competitor. The National Radio-communication Society S.A. is the only provider of such services.
7.	Video-conference	No competitor. The National Radio-communication Society S.A. is the only provider of

		such services.
8.	Spatial Communications by satellite	No competitor. The National Radio-communication Society S.A. is the only provider of such services.

V. The financial situation of the National Society for Radio-communications SA

- (12) The evolution of the main indicators registered by the society over the last 3 years is presented in the following table:

	Mill. ROL		
	2001	2002	2003
Turnover (Thousand ROL)	1.105.909	1.546.268	1.675.753
Gross profit (Thousand ROL)	25.244.044	113.323.133	25.885.463
Rate of profit	2,28%	7,33%	1,54%
Patrimonial Solvability	72,78%	57,88%	54,62%
Rate of financial autonomy	87%	52%	42%
Debt degree	12,73%	47,54%	58,14%

The analysis of the main economical and financial indicators for the period 2001-2003 reveals the fact that The National Radio-communication Society S.A. does not find itself in a financial difficulty.

Thus:

In 2001-2003 the society recorded an ascendant trend of the turnover with an increase of approximately 40% in the year 2002 as compared to 2001 and an increase of 8% in the year 2003 as compared with 2002.

The accounting gross profit was of 25 billion ROL in the year 2001 and 2003, recording a great increase in the year 2002, explained by the emergence of new telecommunication services, given the update in technology of the infrastructure and the attraction of some new important clients such as TELEMobil and GTS.

The solvability presents an ascendant trend (72, 78% in the year 2001, 57, 88% in the year 2002 and 54, 62% in the year 2003) due to the increase of the elements of passive, mainly the increase in the credits for investments, but it maintains itself over the limit of 50%, which reveals a good patrimonial solvability for the society.

The indicator of the financial autonomy rate also situates itself within acceptable limits.

The debt degree records, as a result of some credits contracted exclusively for investment and which were done during the year 2002 and 2003 in the radio broadcasting infrastructure of the society, an increasing evolution reaching a relatively high level in the year 2003 (58,14%), but it maintains itself within favorable limits, though.

The society does not have back payment obligations towards the state budget, the local budgets or the special funds budget. Also, analyzing the situation of the credits contracted until now by The National Radio-communication Society SA it can be noticed that the society reimburses the installments in time and does not have back payment credits.

VI. The necessity of the implementation and the description of the Project „Development and modernization of the public television networks”

- (13) Between 1982-1990 no investments were made for the update in technology or the development of the national networks of radio and TV transmitters. After 1990, the investments were resumed, but the number of the transmitters acquired was relatively small. Because of this fact, they reached a standstill in the quality of the services and rapid development measures were absolutely necessary. Such a measure was taken, in the framework of the HARRIS project, for the radio broadcasting networks with very good results. The TV transmitters having electronic power tubes in most of the cases have the duration of validity outdated and a high rate of wear.
- (14) The TV transmitters and translators acquired after 1990, from brand producers from Italy, France and Germany were meant to improve the programs reception in some areas of the country and to increase the coverage degree with TV programs from 25% to 47%.
- (15) Most of the equipments are in use since the '70s, they are not transistorized and they run on electronic power tubes having a short usage duration and high prices, which are out of the series fabrication at the same time with the transmitters and which can be acquired with difficulty from some producers – only imported – by special order and for high prices.
- (16) Annually, the functioning of the transmitters requires the replacement of a large number of tubes; the current equipments consume electric energy and have small electrical efficiency. The increase in the electric energy tariffs directly and immediately influences the tariffs of the National Radio-communication Society S.A. The conversion cost is also very high, the television stations are exploited by the personnel on continuous basis and the maintenance and repairs needs difficult works with parts replacement, reconditioning, assimilations. The increase in electrical efficiency and the reducing of the costs with the materials and conversion costs lead to the solution of replacing the old equipments with new transistorized ones.
- (17) The implementation of the Project “Development and modernization of the public television networks” has a prime importance for Romania as it is one of the sector strategies of the Ministry of Communications and Information Technology and of

the Plan for National Development. The transport and broadcasting of public television programs having a high quality and a national service represents a priority for the National Radio-communication Society S.A.as the only operator.

- (18) The implementation of this project is conducted by respecting the Acts of the International Conferences for Planning, with the agreement of the Ministry of Communications and Information Technology and the Romanian Television Society. The technological process is supervised by the supplier companies MARKLINK and ROHDE & SCHWARZ, in the contracts there are stipulated the training in the factory and the "site surveys" placement, tests upon delivery and technical assistance upon installing, for the situations which require these.
- (19) The selection of the suppliers MARKLINK and ROHDE & SCHWARZ was conducted based on open bidding, the society had thus the opportunity to analyze several tenders and to choose the best of them.
- (20) The capacity was in such a way designed so that it would ensure a quasi-national coverage of Romania with television services for the TV 1 and TV 2 programs as well as regional ones and also to move forward to a new stage of development, that of the digital transmissions.
- (21) The implementation of the project implies the following stages:
 - (a) *Modernizing and extending the "Romania 1" network:*
 - it includes both the modernization of some high power transmitters and translators in the TVR 1 network and the installation of some new small power transmitters for extending the coverage area;
 - installing 16 high power transmitters and 12 radiant systems, 27 translators along with the afferent radiant systems;
 - by leaving behind the channels 2, 3 and 12, a number of 118 translators will be replaced by VHF transmitters of small power and other 92 translators will be replaced by UHF transmitters of small power, all of them along with their afferent radiant systems;
 - 108 UHF transmitters of small power along with their afferent radiant systems, for increasing the percentage of the service to the population with the public national television program "Romania 1";
 - b) *The extension of the TVR 2 network:*
 - the replacement of the transmitters in the TVR2 network with others having a higher power. The replaced equipments will be moved to other locations where there are no transmitters which could broadcast the national public television program TVR 2;
 - installing 19 transmitters of high power and 16 afferent radiant systems, 14 transmitters with radiant systems, equipment which represented provisory solutions and which will be redistributed;
 - c) *Regional TV Project*
 - installing five high power transmitters which will broadcast the programs of the territorial studios of the Romanian Television Society ;

d) Project for terrestrial digital television

- installing two digital transmitters for television having a 1.3 Kw power.

(22) The total value of the investment is USD 70.911.915, the financing sources of this investment are constituted from:

a) bank credit contracted from Raiffeisen Bank having a value of USD 35.000.000 for the contract concluded with the Marklink Communication Establishment company;

b) bank credit contracted from Deutsche Bank having a value of USD 34.999.988,94 for the contract concluded with the Rhode&Schwarz company;

c) own sources of the society in the amount of USD 911.926.

VII. The effects and benefits of the implementation of the Project

(23) The Project „ Development and modernization of the public television networks’’ has as purpose:

- the modernization of the network of television transmitters and translators for the program TV1;
- the increase in the distribution degree for the TV 1 and TV 2 programs to the population, reaching 99% and respectively 90%;
- the modernization of the regional programs broadcasting;
the complete replacement of the transmitters which transmit for the Romania 1 program and the extension of the network for broadcasting the TVR 2 program; in this way the regional programs of the Romanian Society for Television will be watched on a non-stop basis by installing 5 transmitters in Iasi, Cluj, Targu Mures, Craiova and Timisoara;
- the way for the digital television will be opened in Romania by installing 2 DVB – T transmitters in Bucharest and Galati, the broadcasting activity will thus be promoted to a new stage by digitalization and centralized monitoring;
- the significant increase of reception quality;
- placing the production of services within the international standards of the quality of the services.

(24) The implementation of this Project will lead to a reduction of costs with the electrical energy of 13%; of the material costs of 47% and of the work force costs with 30%.

(25) The Project does not reveal negative effects for the environment. The electromagnetic radiations are below the level admitted by the international standards. The equipments which will make up the new networks are protecting both the personnel and the population in the area thanks to its characteristics. In order to minimize the risk regarding the electromagnetic radiation the following measures have been taken:

- a) periodical measures are conducted with a professional measuring device – imported from England;
- b) booths have been built to follow up the broadcast where the exploitation personnel run their activity;
- c) new investments have been made and the current project represents an important stage in the development of the infrastructure of the National Radio-communication Society S.A., as well as the supply with increased security equipment.

VIII. The description of the exact financial aid measure

- (26) In order to finance the Project, the National Radio-communication Society S.A. contracted two external credits as follows:
 - Raiffeisen Bank Credit - value: USD 35.000.000, the period of grant: 10 years, with 1 year grace period, the Libor interest on 6 months + 3,5%/year, semester installments, engagement commission: 1%;
 - Deutsche Bank Credit - value: USD 34.999.988,94, the period of grant: 15 years with a grace period of 5 years, the Libor interest on 3 months + 3,65%/year, semester installments, engagement commission: 1,5%,
- (27) For both credits, the Romanian state guarantee was required. By the Governmental Decision no. 1534/2003, the state guarantees a 100% the external loan totaling up to 70 million USD and the interests, the ensuring bonuses, the commissions and other afferent costs.
- (28) According to the analysis of the Eximbank Romania, the National Radio-communication Society S.A. was situated, based on the data contained in the financial statements concluded on the 31st of December 2002 and the 31st of December 2003, in the credit-worthiness class III, respectively the category of financial performance C, calculated according to the norms of Eximbank, having the following significance: “The societies in this class have a relatively good financial standing, but may have problems related to the financial flux. The reimbursement capacity is usually adequate, but irregularities may show up in the payments of the debts towards the bank, which can be solved however without recalculating the installments or rescheduling of maturity dates. It is very less likely that it will record losses. The risk afferent to the exposures in this category of clients is considered medium, but acceptable by the strict monitoring of the engagements.”
- (29) Considering the placement in the risk category C, the National Radio-communication Society S.A. pays to the Romanian state, represented by the Public Finance Ministry a risk commission of 1,5% of the guaranteed credits’ value.
- (30) The contracted credits with the guarantee of the state will be reimbursed out of own sources of the National Radio-communication Society S.A. The analysis of the estimated profit and loss account and that of the cash flow for the reimbursement

period reveal the fact that the society will have liquidities available for their reimbursement .

IX. Conclusions

- (31) The importance of telecommunications and radio-communications is great, representing a fundamental domain of the national economy development and the improvement of the radio-communications represents a sure way towards the technological opening to the informational society.
- (32) According to *The Resolution of the EC Council of the 25th of January 1999 regarding the public services of telecommunications*, these need a continuous technological progress, new technologies through which they could improve the categories and develop the activities of the digital era, in order to respond to the democratic, social and cultural needs.
- (33) There is no doubt that the aid measure which takes the form of the guarantee is granted from state resources and that by this they favor a certain economic agent, namely the National Radio-communication Society S.A to whom they are offering an advantage in comparison with other economical agents; since the National Radio-communication Society S.A. is found in a legal monopoly position, according to art. 4 paragraph (4) letter A1a) of the Constitutive Act, and no other competitor exists on the market of national radio and television program broadcasting, it cannot be said that the guarantee granted could affect the trade between Romania and the Member States of the European Union. Therefore the financial aid measure granted to the National Radio-communication Society S.A. does not constitute a state aid measure as defined by art. 2 of the Law no. 143/1999 modified and completed by Law no. 603/2003.

IT IS DECIDED THAT

Art.1 Based on art. 12 (2) a) of the *Law no.143/1999 regarding the state aid, modified and completed by the Law no. 603/2003*, the guarantee granted by the state through the Public Finance Ministry for the contracting of some external credits by the National Radio-communication Society S.A. does not constitute a state aid.

Art.2. The current Decision becomes applicable starting the date of its communication.

Art.3. According to the provisions of art.29 of the *Law no.143/1999 regarding the state aid, modified and completed by Law no. 603/2004*, the current Decision can be attacked by the persons interested within 30 days from its communication by the procedure of administrative contentious at the Appeal Court of Bucharest.

Art.4. The current Decision will be communicated by the General Secretariat of the Competition Council:

- To the Public Finance Ministry, Str. Apolodor nr. 17, sector 1, Bucuresti,

- To the National Radio-communication Society S.A., Bd. Libertatii nr. 14A, Sector 5, Bucuresti.

Art.5. The General Secretariat and the Direction for State Aid Authorization of the Competition Council will follow up on the fulfillment of the current Decision.

PRESIDENT

MIHAI BERINDE