



R O M A N I A
CONSILIUL CONCURENTEI
www.competition.ro

Piata Presei Libere, sector 1
Bucuresti
λ
Cabinet Presedinte
Tel: 021.223.11.98, 021.223.11.99;
Fax: 021.223.49.08
mihaiberinde@rccomp.eunet.ro

DECISION NR. 269
from 29.09.2004

Regarding the Measure of Financial Support Granted by the Ministry of Public Finances to S.C. TERMOELETRICA 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,

Having in regard the Regulation regarding the state aid under the form of compensations, granted to certain undertakings entrusted with the performance of a service of general economic interest,

Based on the following grounds:

I. PROCEDURE

- 1.1. By the address no. 109051 from 22.09.2004 registered at the Competition Council as no. RS-AS 83/22.09.2004, 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 obtaining an external bank loan for refunding before the dead line of the loan contracted by the company, in the basis of the Government Decision no. 341/2004, as well as for the payment of the relating interests.
- 1.2. The notification became effective at the date of its registration to the Competition Council, namely on 22.09.2004.

II. DESCRIPTION OF THE MEASURE

2.1 The state aid's form

2.1.1. The financial support S.C. TERMOELECTRICA S.A. benefits of, is granted as a guarantee given by the Ministry of Public Finances, in the name of the State, for obtaining an external bank loan designated for the refinancing, before the time limit, of a loan taken by the company in the basis of the GD no. 341/2004, as well as for the payment of the relating interests.

2.1.2. Contracting the external loan in amount of Euro 190,000,000, 100% guaranteed by the state, including interests, commissions and other relating

costs, was approved by the GD no.190/2004 regarding the guarantee by the Ministry of Public Finances, of an external loan for the Commercial Society of Electrical and Caloric Energy Production "Termoelectrica" - S.A..

2.2. [.....]¹

2.3. Received State Aid

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

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 ²	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 ²	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

Source: SC TERMOELECTRICA SA

The state aid was authorized by the Competition Council's Decision no.7/21.01.2002.

III. ANALYSIS OF THE SUPPORT MEASURE FROM THE STATE

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.

¹ Confidential data

² State aid allocations within an existing scheme; the state aids partially compensated the obligation of performing a service of general economic interest

^{**} The state aid was authorized by the Competition Council's Decision no.7/21.01.2002.

2, align. (1) of the Law no. 143/1999 on State aid, modified 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 tender 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 energy 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 caloric energy, 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 caloric 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 captive 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 captive 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. By the winter program in energetic field, approved by Governmental decision, are established the necessary stocks of raw materials for producing electrical and caloric energy for the current consumption as well as for constituting the stocks necessary for the functioning of the National energetic System in safety conditions, as well as of the company where the stocks are made.

3.3.5. The credit approved by the GD no. 1190/2004 is designated for the refunding of the treasury loan contracted by the company in the basis of GD no. 341/2004, for its reimbursement before the dead line. The unutilized amounts shall be used for the financing of fuel acquisitions for the winter of 2004-2005 to insure the necessary of electrical and caloric energy. This should allow the functioning in safety conditions of the National energetic System, satisfying the consumption peaks, especially in the cold periods of the year.

3.3.6. By the GD no.341/2004 it was approved the granting of a loan from the availability of the general current account of the State treasury, in amount of ROL 6,700 bill., to the company TERMOELECTRICA S.A with the exclusively purpose of reimbursing the credit, contracted for a one year period, based on the GD no.. 250/2001 and of the GD no. 1200/2000, by the undertaking, in order to complete the financial resources for petroleum, black oil, energetic coal and natural gas import, necessary for the winter period 2000-2001.

3.3.7. Due to the entering data regarding the fuels costs, which modified according to the price evolution on the fuel market, and the energy tariffs were regulated in correlation with the State policies, S.C. TERMOELECTRICA S.A. didn't realized the profit expected according to the calculation ex-ante made in feasibility studies elaborated for the re-habilitation of certain caloric-energetically groups, fact causing the company's impossibility to reimburse the credits.

3.4. The condition from point 3.1. letter. c) is fulfilled in the following manner:

3.4.1. Taking into account that the performing of the service of general economic interest, consisting in the production and supply of electrical and caloric energy, with the fulfillment of the criteria imposed by the licenses, contract clauses and legal provisions, cannot be interrupted, all the company's financial resources are allocated for performing the obligation of service of general economic interest.

3.4.2. In order to insure the production of energy at technical and safety parameters requested by the National Energetic System, according to art. 30 in the electrical Energy Law no. 318/2003, S.C. TERMOELECTRICA S.A., as electrical and caloric energy producer, has the obligation to maintain a fuel stock at a level sufficient for fulfilling the obligations of continuous production and supplying of electrical energy, stipulated by the provisions in force.

3.4.3. The selling prices for the electrical and caloric energy are regulated by the National Authority of Regulation in the Energy field (ANRE), many times the selling price for the energy doesn't cover the exploiting costs. Therefore, for S.C. TERMOELECTRICA S.A., the average selling prices, respectively the costs for producing electrical and caloric energy, were the following:

Years	Electrical Energy		Caloric Energy	
	Unitary price (ROL MWh)	Unitary cost (ROL MWh)	Unitary price (Gcal)	Unitary cost (Gcal)
2001	934,527	1,105,994	242,577	586,312
2002	1,331,416	1,223,670	630,306	737,871
2003	2,013,243	1,797,120	771,751	811,254

Source: SC TERMOELECTRICA SA

Until 2002, the average selling price for the electrical energy didn't cover the average exploiting costs, while for the caloric energy, until now, the exploiting costs aren't covered by the selling price.

3.4.4. The compensation under the form of financial support granted by the state doesn't exceed the costs resulted from the obligation of fulfilling a service of general economic interest, this being demonstrated especially by the economical –financial results obtained by the company according to the accounting balance sheets for the period 2001-2003. S.C. TERMOELECTRICA S.A. registered in 2001 a loss in amount of ROL 3,202,357,264 thousands, in 2002 of ROL 2,614,266,770 thousands, and at 31.12.2003, the loss amounted ROL 609,218,600 thousands.

3.5. The condition from point 3.1. letter. d) isn't fulfilled because:

3.5.1. The entrustment of the service of general economic interest of producing electrical and caloric energy wasn't made through a public tender.

3.5.2. The beneficiary of the financial support measure didn't submit a comparative analysis of the company's costs with the costs beard by a company activating in the same sector, well managed and having the adequate technical endowment. In the same time, due to the different conditions of carrying out the service of general economic interest of producing electrical and caloric energy, by the companies from the Member States of the European Union, a comparative analysis between heir costs and the costs of S.C. TERMOELECTRICA S.A. isn't relevant for establishing the level of the compensation.

3.6. As the four conditions mentioned at point 3.1. are not cumulatively fulfilled, namely the condition provisioned at point. 3.1. letter. d) couldn't be demonstrated, the financial support measure granted to S.C. TERMOELECTRICA S.A., notified by the Ministry of Public Finance, is a state aid, within the meaning of art. 2 in the Law no. 143/1999 of state aid, with the subsequent modifications and completions.

3.7. The compensation granted for performing the service of general economic interest is a state aid compatible with the normal competitive environment if all the following conditions are cumulatively met:

3.7.1. the state aid is necessary for performing the service of general economic interest;

3.7.2. the state aid doesn't unduly affect the trade between Romania and the Member States of the European Union.

3.7.1. The necessity of the state aid

3.7.1.1. S.C. TERMOELECTRICA S.A., according to art. 30 in the Electric Energy Law no. 318/2003, in order to insure the production of energy at the technical and safety parameters requested by the national energetic system, has the obligation to maintain a stock of fuel at a level sufficient for carrying out the obligation of production and continuously supply of electrical energy.

3.7.1.2. The satisfying of the consumption peaks for the cold periods of the year, the re-establishment of the safety stocks as well as the insuring of a certain stability and fluency in supplying the population and the undertakings with fuel (crude oil and natural gas) needs the acquisition of a supplementary volume of fuel from the external market, acquisition that can be made only if having the confidence of sure financial resources, fact that made S.C. Termoelectrica S.A. to solicit the granting of state guarantee for contracting certain external credits.

3.7.1.3. The credits contracted by the company based on the GD no. 250/2001 and GD no. 1200/2000 which had as purpose the completion of the financial resources for the import of petroleum, black oil, energetically coal and natural gas, necessary for the winter period 2000-2001, were reimbursed by the credit approved in the GD no. 341/2004. The credit contracted by S.C. TERMOELECTRICA S.A. based on GD 1190/2004 having as guarantor the State, has a purpose the reimbursement before the time limit of the loan contracted in the basis of GD no. 341/2004, as well as the financing of fuel acquisitions for the winter 2004-2005, which would insure the necessary of electrical and caloric energy.

From the abovementioned facts, the Competition Council observes that the financial support measure notified by the Ministry of Public Finance is necessary for performing the service of general economic interest at the technical and safety parameters requested by the national energetic system.

3.7.2.. The state aid that doesn't unduly affect the trade between Romania and the European Union's Member States

3.7.2.1. Having into view that S.C. TERMOELECTRICA S.A. doesn't export neither electrical energy, nor caloric energy, demonstrated by the fact that the turnover is entirely realized on the domestic market, the Competition Council observes that the state aid granted to the undertaking doesn't unduly affect the trade between Romania and the European Union's Member States.

3.7.2.2. On the Romanian market of electrical energy produced in condensation and of the caloric energy activates many producing companies, namely: S.C. Electrocentrale Turceni S.A., S.C. Electrocentrale Rovinari S.A., S.C. Electrocentrale Turceni S.A., S.C. Electrocentrale Bucuresti S.A..

3.7.2.3. As the notified state aid isn't a over compensation for the performing of the service of general economic interest, which would favor S.C. TERMOELECTRICA S.A. in comparison with the other electrical and caloric energy producers activating on the energetic market, being necessary for fulfilling in best conditions the obligation of service of general economic interest, the notified support measure doesn't unduly affect the competition on the Romanian market of electrical and caloric energy.

No overcompensation

3.7.3. The Competition Council underlines that the state aid granted to S.C. TERMOELECTRICA S.A. under the form of a guarantee for an external credit isn't an overcompensation, as it doesn't exceed the costs resulted from the obligation to provide the service of general economic interest.

3.8. This way the two conditions abovementioned at point 3.7 are cumulatively met, conditions provisioned by the *Regulation regarding the*

state aid under the form of compensations granted to certain undertakings entrusted with the performance of a service of general economic interest, for appraising that the support measure granted to S.C. TERMOELECTRICA S.A., representing the compensation of the obligation of performing a service of general economic interest, is a state aid compatible with the normal competitive environment.

3.9. As, at the time of contracting the external credit, S.C. TERMOELECTRICA S.A. was confronted with a difficult economic-financial situation (decreases the turnover, registers losses, negative own capital on 30.06.2004) and therefore existing a high possibility of non-reimbursing this credit, according to point 3.2.2. of Chapter III „The state aid’s value ” from the *Guidelines regarding the state aid under the form of guarantees*”, the value of the guarantee equals the sum actually covered by it. Therefore, the value of the state aid consisting in guarantee given by the state of the external credit contracted by S.C. TERMOELECTRICA S.A. is of Euro 190,000,000, respectively of ROL 7,812.8 billions³.

DECIDE

Art. 1. The support measure notified by the Ministry of Public Finance, consisting in the guarantee given by the State of an external credit contracted by S.C. TERMOELECTRICA S.A, is a state aid in the meaning of art. 2 in the Law no.143/1999 of the state aid, modified and completed by the Law no 603/2003 and the GO no. 94/2004 for regulating certain financial measure.

Art. 2. In the basis of art. 12 align. (2) letter. b) corroborated with art.14 align (1) letter. j) in the Law no.143/1999 of the state aid with the subsequent modifications and completions, is being authorized the state aid for S.C. TERMOELECTRICA S.A., granted in the basis of the GD no. 1190/2004 regarding the guarantee by the Ministry of Public Finance of an external loan for the Commercial Society for Electrical and Caloric Production "Termoelectrica" - S.A..

³ For the conversion was utilised the exchange rate ROL/ Euro of BNR from 28.09.2004, respectively
1 Euro=41,120 ROL.

Art. 3. The value of the state aid is of Euro 190,000,000, respectively ROL 7,812.8 billions.

Art. 4. The present Decision becomes applicable at the date of its communication.

Art. 5. According to the provisions of art. 24 in the Law no. 143/1999 of the state aid with the subsequent modifications and completions, the Ministry of Public Finance shall submit to the Competition Council information regarding the granted state aids, for their inventorying and monitoring.

Art. 6. According to the provisions from art. 29 in the Law no. 143/1999 of the state aid with the subsequent modifications and completions, the present Decision may be appealed to the Bucharest Court of Appeal, division Contentious Administrative, in 30 days from its communication date.

Art. 7. The present Decision will be communicated by the General Secretariat of the Competition Council to:

- Ministry of Public Finances, 17, Apolodor Street, sector 1, Bucharest;
- S.C. TERMOELECTRICA S.A., 1-3B-dul Lacul Tei., sector 2, Bucharest.

Art. 8. The General Secretariat and the Department for State Aid Authorisation of the Competition Council shall pursue the fulfilment of this Decision.

PRESIDENT

MIHAI BERINDE