

DECISION NO. 26
of 21.01.2004

**ascertaining that the measure notified by the Ministry of Public Finance
concerning the intention to grant payment facilities to National
Company “Cai Ferate” CFR SA does not constitute state aid**

The Competition Council’s Plenum,

Based on:

1. Decree no. 1075/2001 on the appointment of the members of the Competition Council;
2. The provisions of the Competition Law no. 21/1996, published in the Official Gazette no. 88, Part I, of 30.04.1996, with subsequent amendments and completions;
3. The provisions of the Law no. 143/1999 on state aid, published in the Official Gazette no. 370, Part I, of 03.08.1999, with subsequent amendments and completions;
4. The Regulation on organization, functioning and procedure of the Competition Council, published in the Official Gazette no. 50 bis, Part I of 25.03.1997 with subsequent amendments;
5. The notification submitted by the Ministry of Public Finance under the address no. 293402/17.12.2003, registered at the Competition Council under the no. RS-AS 81/17.12.2003, notification that became effective on the registration date;
8. The Note of the State Aid Department.

Based on the following:

1. The National Company “Cai Ferate” CFR S.A. (CNCF CFR SA) is carrying out **activities of national public interest in order to assure the public rail transport and to satisfy the needs to defence the country.**
2. CNCF CFR SA is the administrator of public rail infrastructure, of the goods resulted from investments, developments or modernizations as well as of the private rail infrastructure, of rail infrastructure elements others than those constituting public rail infrastructure, buildings, lands, production units, etc.

3. CNCF CFR SA is offering the rail infrastructure to the rail transport operators on **an indiscriminating basis** and on the grounds of the access contract according to art. 12 (1) of the Governmental Decree no. 581/1998.

4. As a result of insufficient financing from the state budget in order to make the major repairing of public rail infrastructure, the necessary annual volume of the expenditures for maintaining activities is continually growing, being determined by the accentuated degradation process of infrastructure and by the necessity of maintaining the minimal exploitation and safety parameters.

5. The financial support requested by CNCF CFR SA under the Governmental Emergency Ordinance no. 40/2002 is consisting in exemption from the payment of interests and delay penalties corresponding to the owing (residual) budgetary obligation existing at 31.12.2001 and calculated till 08.04.2002 in total amount of ROL 225,500,000,000.

6. The aim of the request is represented by the necessity to optimize the activity of exploitation, maintaining lines and installations as well as of the other activities of the company, at the level of the current and future standards in the field of public rail transport, both domestic and international.

7. The company has the obligation to fulfil a public service of national general interest in order to assure the public rail transport, both domestic and international, in accordance with the requests of safety traffic and of transport specific technologies.

8. On the relevant market where the company is carrying out its activity there are no competitors, CNCF CFR SA being the only undertaking entrusted with the administration of rail infrastructure of Romania having also in view aspects of national security.

9. Having in view that on the relevant market there is no competition, the elements characterizing the state aid are not cumulatively fulfilled as it comes out from the interpretation of art. 2(2) of the Law no. 143/1999 and

of the *Regulation on the form, content and other details of a state aid notification*, published in the Official Gazette of Romania, Part I, no. 125/24.03.2000. As a consequence the notified measure does not constitute state aid.

DECIDES

Art.1. Within the meaning of art. 8 (2) corroborated with art. 12 (2) a) of the Law no. 143/1999 on State aid, the exemption of the National Company “Cai Ferate” CFR SA from the payment of interests and of delay penalties corresponding to the owing (residual) budgetary obligation existing at 31.12.2001 and calculated till 08.04.2002 in total amount of ROL 225,500,000,000, does not constitute state aid as the elements constituting the state aid are not met cumulatively.

Art.2. The present Decision shall become effective at the date of its communication.

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

- the Ministry of Public Finance, 17 Apolodor street, sector 5, Bucharest;
- the National Company “Cai Ferate” CFR SA, 38 Dinicu Golescu avenue, sector 1, Bucharest.

Art.5. According to the provisions of art. 29 of the Law no. 143/1999 on State aid, the present Decision can be appealed by concerned persons before the Bucharest Court of Appeal, Division Contentious Administrative, within 30 days from its communication.

Art.6. The Secretariat General and the State Aid Department of the Competition Council shall pursue the fulfilment of the present Decision.

PRESIDENT

THEODOR VALENTIN PURCAREA