



**R O M A N I A**  
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DECISION NO 285  
of 19.10.2004

concerning the measures of financial support granted by Ministry of Public  
Finance to S.C. Hidroelectrica S.A.

THE COMPETITION COUNCIL,

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

Having in view the provisions of the Competition Law no. 21/1996,  
published in the Romanian Official Gazette, Part I, no. 88 on April 30, 1996,  
with further modifications and completions,

Having in view the provisions of the Law no. 143/1999 on the State aid, as  
published in the Romanian Official Gazette, Part I, no. 370 on August 3,  
1999, with further modifications and completions,

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

On the grounds of,

## **I. PROCEDURE**

- (1) By the address no. 108.178/ 24.05.2004, registered to the Competition Council under the no. RS-AS 59/26.05.2004, the Ministry of Public Finance notified on the base of art. 6 of the Law no. 143/1999 on State aid with further modifications and completions, the measures of financial support to be granted to S.C. HIDROELECTRICA S.A. The measures consist in guaranteeing by the State of external loans contracted by the company, the granting of budgetary credits for financing the investments and exemption from the payment of custom duties and VAT afferent to the imports of equipments necessary for investments.
- (2) Through the address DAAS/419/15.06.2004, complementary information was requested on the base of art. 6 (4) of the Law no. 143/1999, with further modifications and completions. The Ministry sent the information through the address no. 157.121/29.06.2004, registered to the Competition Council under no. 3846/29.06.2004. Since the answer received did not clarify all the aspects, a new complementary request of information was sent through the addresses no. DAAS/576/19.07.2004, DAAS/607/27.08.2004 and DAAS/681/17.09.2004.
- (3) The information requested was sent through the address no. 689080/27.09.2004 and 12877/ 29.09.2004, registered to the Competition Council under no cu DAAS no. 722/29.09.2004 and DAAS no. 732/01.10.2004. The notification became effective at the date the information was accurate and complete, respectively 01.10.2004.

## **II. DESCRIPTION OF THE MEASURES**

### **2.1 State aid form**

- (4) The financial support of which S.C. HIDROELECTRICA S.A. benefits, consists in:
  - guarantees granted by the State for obtaining the external credits destined to supplement the financing of investment for modernization and rehabilitation of National Energetic System, investments necessary for

increasing the efficiency and safety level in function. The contracted credits are guaranteed 100% on behalf of State by the Ministry of Public Finance;

- budgetary credits from the Special Development Fund of the Energetic System that have been subsequently provided in the Law of State Budget (for years 2003 and 2004) in order to realize the investments for the objectives of Hydro energetic System;

- exemption from the payment of custom duties and VAT afferent to the imports of equipments necessary for investments in the Hydro Energetic System.

## **2.2. Beneficiary of the State support measures**

(5) The beneficiary of the measures of State financial support is S.C. HIDROELECTRICA S.A., shares commercial company, which was set-up by the re-organization of the National Electricity Company S.A. in the base of G.O. no. 627/2000. The social capital is amounting 39,482,929,600,000 ROL and it is held entirely by the Romanian State as unique shareholder, through the Ministry of Economy and Commerce.

(6) S.C. HIDROELECTRICA S.A. has as specific object of activity the production and selling of electric power by observing the legislation in force. The main objects of activity are:

- production of electric power in Hydroelectric power plants and selling of electric power;
- realization of services of frequency-power control system, voltage, assuring the static and dynamic fund and others for the national Energetic System;
- modernization and technology of the existing energetic installations as well as the extension of automation;
- realization of investments in the activity field and carrying out the construction- assembly works;
- revisions and reparations of the aggregates and energetic installations, as well as of the specific work and mechanic device;
- sluicing the river ship on the Danube (the passing from upper side of the river to the lover side, through the section of a sluice dam; this transiting can be done only with the help of some special installations which set up or down the ship), river transportation and navigation in own field and the transshipping of goods between shipping transportation means and ground transportation means, by available capacities on the canal lock of the Danube; S.C. HIDROELECTRICA

- S.A. has the obligation to insure this service, within the area formed by the sluice dams from its patrimony, service for which it doesn't impose any kind of taxes;
- realization of the programs for reducing the impact of the energetic installations over the environment.

- (7) S.C. HIDROELECTRICA S.A. has, at present, 8 subsidiary companies producing the electric power (S.C. Hidroserv Bistrita, S.C. Hidroserv Cluj, S.C. Hidroserv Arges, S.C. Hidroserv Hateg, S.C. Hidroserv Portile de Fier, S.C. Hidroserv Ramnicu-Valcea, S.C. Hidroserv Sebes, S.C. Hidroserv Slatina) and 12 branches. The subsidiary companies of S.C. HIDROELECTRICA S.A. have own legal personality.
- (8) The relevant market is represented by public services of electric power production market. As concerns the relevant geographic market, the electric power produced by S.C. HIDROELECTRICA BUCURESTI S.A. is supplied to S.C. ELECTRICA S.A. from Moldova, Dobrogea, Transilvania Nord, Transilvania Sud, Muntenia Sud, Muntenia Nord, Banat. Also, the company exports electric power in Greece, Albany, Serbia and Montenegro.
- (9) The market share of S.C. HIDROELECTRICA BUCURESTI S.A. is of 23%. The main competitors of S.C. HIDROELECTRICA BUCURESTI S.A. on the domestic market are: S.C. Electrocentrale Bucuresti S.A., S.C. Electrocentrale Turceni S.A., S.C. Electrocentrale Rovinari S.A., S.C. Electrocentrale Deva S.A., S.C. Termoelectrica S.A., S.C. Nuclearelectrica S.A. It has to be underlined that S.C. HIDROELECTRICA S.A. is the sole undertaking on the Romanian market that produces electric power in the Hydro system.

## **2.3. Modalities of granting the financial support**

### ***2.3.1 State guarantees***

- (10) According to the Guarantee Agreement between Romania and International Bank for Reconstruction and Development, signed at Washington on 29 August 1995, ratified by G.O. no. 41/1995, modified by *G.O. no. 584/2002 on approving the amendments agreed on Guarantee Agreement at Bucharest on 31 May, 2002 between Romanian Government, represented by the Ministry of Public Finance, and International Bank for Reconstruction and*

*Development*, the Regie Autonome of Electricity “RENEL” has contracted an external credit, guaranteed 100% by the Ministry of Public Finance on behalf of the State, amounting 110 million USD. The State guarantees unconditional the corresponding payment in due time of the capital, interests, loan expenses and of premium, if necessary, upon the anticipated payment of the loan, and the accomplishments of other obligations of the borrower (RENEL). The goal of the credit contract is the financing of the **”Modernization and re-habilitation of the National Energetic System”** Project.

- (11) The National Company of Electricity S.A. (CONEL) was set up as result of the re-organization of Regie Autonome of Electricity “RENEL” S.A. in the base of G.O. no. 365/1998. The ongoing credits of Regie Autonome of Electricity “RENEL” S.A. were taken over by the new company. In the base of G.O. no. 627/2000, the National Company of Electricity S.A. was cancelled, the object of activity was taken over by S.N. Transelectrica S.A., S.C. Termoelectrica S.A., S.C. Hidroelectrica S.A. and S.C. Electrica SA.. As result of the re-organization, each new company took over some parts of the credits of the former National Company of Electricity, depending on the objectives established in the Loan Agreement and depending on the activity object of each company.
- (12) S.C. HIDROELECTRICA S.A. took over, by the Amendments of 31 May 2002 of the Loan Contract of 29 August 1995, in the base of the above-mentioned Loan Agreement, a part of the credit amounting 747,471 USD, the equivalent of ROL 24,906,481,191, having as objective the assuring of consultancy services for the energetic sector reform. At the date of its setting-up, the company had the obligation to reimburse the credit, the credit being entirely drawn. The reimbursing period of the credit is 01.05.2002-01.11.2015.
- (13) By G.O. no. 474/1997 modified by G.O. no. 652/1999, the Ministry of Public Finance was authorized to guarantee, on behalf and account of the State, the external credits in value of 152.7 million CHF, as well as the interests, commissions and other costs afferent to external credits to be contracted by the National Company of Electricity S.A. (CONEL), for financing the modernization works of hydro aggregates 2-6 of Hydro Electric Power Plant Portile de Fier I. After the restructuring of CONEL, this project was entirely taken over by S.C. HIDROELECTRICA S.A., which concluded commercial contracts with Vatech Hydro Firm for the realization

of the investments. For the observance of this contract, the company required the following external loans, guaranteed by the State:

- For the Group III (HA4) the external credit 100% guaranteed by Ministry of Public Finance in 2002 in value of 27,970,484 CHF, granted by CITYBANK London for a 7 year period, destined to financing:
  - 85% of the commercial contract value, amounting 25.98 million CHF;
  - 85% of the insurance premium value ERG, amounting 2.08 million CHF.

The risk commission of the Ministry of Public Finance, as guarantor, is of 4% of the loan value and it is paid 2 times a year by the company in the period 27.06.2002 -27.06.2007.

The credit interest is Libor 6 months + 0.6% per year. The reimbursing period of the credit : 28.12.2002 – 28.06.2009.

The credit was drawn in value of 27,955,325.3 CHF.

- For the Group IV (HA3), the external credit 100% guaranteed by Ministry of Public Finance in 2002 in value of 28,848,672.75 CHF, granted by UBS AG Switzerland for a 8.5 year period, destined to financing:
  - 85% of the commercial contract value, amounting 26.72 million CHF;
  - 85% of the insurance premium value ERG, amounting 2.13 million CHF.

The risk commission of Ministry of Public Finance, as guarantor, is of 1.5% of the loan value and it is paid by the company in the period 05.11.2002-09.03.2005.

The credit interest is Libor 3 months + 0.5 % per year.

The reimbursing period of the credit: 02.02.2004-02.08.2010

The credit was entirely drawn until present.

- For the Group V (HA2), the external credit 100% guaranteed by Ministry of Public Finance in 2003 in value of 30,015,854.5 CHF, granted by UBS AG Switzerland for a 8 year period, destined to financing:
  - 85% of the commercial contract value, amounting 28,191,257.25 CHF;
  - 85% of the insurance premium value ERG, amounting 1,824,597.25 CHF.

The risk commission of Ministry of Public Finance, as guarantor, is of 1.5% of the loan value and is paid by the company in the period 14.10.2003-14.10.2005.

The credit interest is Libor 6 months + 0.5 % per year.

The reimbursing period of the credit: 28.02.2005-28.08.2011.

The credit was drawn in value of 13,275,037.5 CHF.

- For the Group VI (HA1), the external credit will be 100% guaranteed by Ministry of Public Finance (until now was not issued the indemnity letter) in value of 27,936,302.3 CHF from UBS AG Switzerland, destined to financing:
  - 85% of the commercial contract value;
  - 85% of the insurance premium value ERG.

The commission of the risk fund will be established after the issuing of the indemnity letter by the Ministry of Public Finance.

The interest rate from the draft of Loan Agreement is Libor CHF at 6 months plus 0.50% per year and it will be paid semi-annually, with the option of fix interest.

The credit's reimbursement shall be done in 14 equal, consecutive half-year rates, the first being at 6 months from the date of the preliminary receiving, but not later than April the 30<sup>th</sup>, 2006.

The total value of credits guaranteed by the State in base of the G.O no. 474/1997 is of 114,771,313 CHF, the equivalent of 3,036,504.6 million ROL<sup>1</sup>.

- (14) The total value of all the credits guaranteed by the State for financing the investments of S.C. HIDROELECTRICA S.A. is of 3,061,411.1 million ROL.

### ***2.3.2 The budgetary credits***

- (15) By G.O. no. 24/1994 has been constituted the Special Fund for the Development of Energetic System, for supplementation of own sources for financing, other then the nuclear ones from the production sector, transportation, distribution and utilization of electric and thermal energy. The Budget of the Special Fund for the Development of Energetic System is approved annually as annex to the Law of State Budget. Starting with 2003, the sums destined to financing some objectives, allocated from the Special

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<sup>1</sup> The value in ROL was calculated at National Bank exchange rate of 29.09.2002, 1CHF =26.457 lei.

Fund for the Development of Energetic System, were provided in the Law on State Budget.

- (16) The total value of the budgetary credits received by S.C. HIDROELECTRICA S.A. in the period 2000-2004 is of ROL 4,499,816,298,000.

### ***2.3.3 Exemption from the payment of custom duties and VAT***

- (17) The company benefits of this facility in the base of *G.E.O no. 247/2000 on exemption from the payment of custom duties, for the imported goods, necessary for major reparation for the modernization and increasing the safety and capacity of Electric Power Plant Portile de Fier I*, approved by the Law no. 251/2001, completed by G.O. no. 56/2001.
- (18) The total value of exemption from the payment of custom duties and VAT, by which the company is benefiting in the period 2000-2004, is of ROL 440,013,208,560, out of which ROL 75,555,681,571 represents exemption from the payment of custom duties and ROL 364,457,526,989 represents exemption from the payment of VAT.

## **III. THE ASSESMENT OF THE SUPPORT MEASURE GRANTED BY THE STATE**

### **3.1. The obligation of public service of general economic interest**

- (19) The financial support granted to a company carrying out a service of general economic interest is not considered State Aid, under the meaning of art.2 in the Law no.143/1999 regarding the State aid, with the subsequent modifications and completions, if the following conditions are met cumulatively:
- a) the obligation of carrying out a service of general economic interest is entrusted by a normative/administrative act and it is clearly defined;
  - b) the parameters based on which the compensation is being calculated are established ex-ante, in an objective and transparent manner, for avoiding that any economic advantage would come to the beneficiary;
  - c) the compensation mustn't exceed what is necessary for totally or partly covering the costs resulted from the service of general



- economic interest, taking into consideration the relevant incomes and a reasonable profit for carrying out this obligation;
- d) when the undertaking carrying out the obligation of service of general economic interest was not entrusted by a open public tender procedure which would have allowed the selection of an offerer capable to supply that service at the smallest costs, the level of the necessary compensation must be determined based on a comparative analysis between the undertakings' costs and the costs had by an undertaking well managed, profitable and which meets the conditions imposed by the carrying out of that public service, taking into account the relevant incomes as well as a reasonable profit came from the fulfillment of the obligation of service of general economic interest.

### **3.2. The condition of point 3.1.(a) is fulfilled as follows:**

- (20) S.C. HIDROELECTRICA S.A. is carrying out its electric power production activity in the base of the License no. 332/2001 issued by the National Electric Power Regulating Agency (ANRE) and the insurance services of the technological system in the base of License no. 333/2001.
- (21) According to the article 16(1) of the Law on Electric Power no. 318/2003 “the activities and services for which the licenses are issued are those of public interest, exempt those that are destined exclusively to satisfy the own consumption of authorization and license owner”.
- (22) In the setting - up act of the company, respectively G.O. no. 627/2000, is provided that S.C. HIDROELECTRICA S.A. is in charge with the functioning of the own energetic installations under the conditions of quality, safeness, efficiency and environment protection.
- (23) The obligations of S.C. HIDROELECTRICA S.A., as electric power producer, according to the Article 30 of the Law on Electric Power no. 318/2003 are the following:

- to assure the supplies of electric power and of system technologic services by observing the criteria imposed in the licenses, the contractual clauses and the regulations in force;
- to offer, under non discriminatory conditions, the entire available electric power as well as the system technologic services;
- to maintain a sufficient water reserve for the accomplishment of the obligations of production and continuous supply of electric power, provided by the regulations in force;
- to conform, from the operative point of view, to the requirements of transport and system operator and to set up, on a case by case basis, the own gradation of operative management.

### **3.3. The conditions of point 3.1. (b) are fulfilled as follows:**

- (24) The electric power market is a 65% regulated market; the regulating authority in the field is the National Electric Power Regulating Agency (ANRE). The high level of regulating of these markets was imposed by the existing structure of internal producers and by the necessity of maintaining the cheap prices to consumers that could not choose the suppliers.
- (25) The selling of electric power on regulated market is made at prices approved by ANRE, and the price of electric power sold on competitive market is fixed freely based on the direct negotiation under a threshold established by ANRE (threshold that differs from any eligible consumer to other).
- (26) S.C. HIDROELECTRICA S.A. acts on the competitive market since 2000, when appeared the first licensed eligible consumers with which concluded contracts at the negotiated prices. The quantity sold on competitive market of the total hydro production was of 3.4% in 2000, 28.2% in 2001, 45.9% in 2002 and 50% in 2003. In 2004, the quantities that could be sold by the company on the competitive market are limited to approx. 50% of the total sold production by the ANRE Order no. 33/2003 and no. 8/2004.
- (27) Another regulation aspects is represented by the fact that all the producers are obliged to produce the quantities required by the National Energetic

Dispatching, when the country consumption-production balance is unbalanced, no matter the way of contract realization.

- (28) Thus, for fulfilling the obligation, S.C. HIDROELECTRICA S.A. had to buy in 2003, 2465 MWh from Termoelectrica Bucuresti, Electrocentrale Deva, Termoelectrica Ploiesti, Electrocentrale Rovinari, Electrocentrale Turceni, Termoficare 2000 Pitesti, CET Arad, Termica Suceava, to a much higher price than the selling one, respectively 1,575,162 lei/MWh. The cause is represented by the fact that because of the prolonged dryness, S.C. HIDROELECTRICA S.A. could not supply the own electric power necessary for covering the portofolio contracts concluded with S.C. Electrica S.A. 2000 Pitesti, CET Arad, Termica Suceava. This represents the main reason for which in 2003, the company registered losses of 3,695,456,236,000 ROL.
- (29) The tariff on regulated market is prior calculated by ANRE and the tariff on the competitive market is directly negotiated with the eligible consumer.
- (30) Before the starting of the financial year, S.C. HIDROELECTRICA S.A. grounds an income-expenses budget that has to be analyzed and approved by the Ministry of Economy and Commerce, the Ministry of Public Finance and the Romanian Government. Also, the tariff for the next year is grounded and submitted for the adjustment and the approval to ANRE.
- (31) In the income-expenses budget and the grounding note of the tariff there are distinctively presented the incomes (cashing on regulated market, cashing from eligible consumers and exports, cashing from system services, cashing from the covering of losses in network) and the expenses (material expenses, maintaining and reparations expenses, staff expenses, others) afferent to operation activity and to planned investments projects to be realized in the respective year.
- (32) The investment projected is presented in the programs and sub-programs, depending on objective, being specified the cost of project, financing sources, achieving deadlines. Thus, the costs afferent to the investments necessary for a proper functioning of hydro electric system are fixed in advance.

- (33) Before any financial year, in grounding the incomes-expenses budget submitted by the company, are estimated the necessary funds for accomplishing the program for repairing and renewing the technology. From lack of financial resources, these expenses aren't totally approved by the state, so that their accomplishment is delayed from one year to the other, leading to the increase of the usage degree of those installations.
- (34) The result of the financial year is estimated as being a reasonable profit in the limit of 15% of turn-over. By analyzing the balance sheets, it was demonstrated that in none year of the period 2000-2004, the registered profit did not overcome 14% of turn-over.
- (35) At the moment of granting the loan by the International Bank for Reconstruction and Development, the World Bank worked out STAFF APPRAISAL REPORT NO. 13887/RO of 09.08.1995 – Assessment Report of “Project” that comprises the Energetic Sector Reform Program, the Program on rehabilitation of thermal plants and the Restructuring Program of RENEL. According to the Assessment Report worked out by the World Bank, at Chapter E “Financial Prognosis” point 4.20 it was foreseen that average tariffs for electric power to be maintained to approx. 50USD/MWh.

#### **3.4. The condition of the point 3.1. (c) is fulfilled as follows:**

- (36) In the period 1999-2004 when S.C. HIDROELECTRICA S.A is benefiting of support measures notified to the Competition Council, the selling prices and the production costs are as follows:

Table no. 1

	ROL/MWh				
	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>
Producer price on regulated market	148,357	175,790	181,341	239,168	411,400
Producer price on the competitive	577,672	793,162	896,227	853,764	880,513

market					
Production cost	218,139	428,519	651,566	941,721	620,000

*The source: Response to Supplementary information*

- (37) It has to be noted that on the regulated market, in each analyzed year, the production cost is higher than the selling price of electric power at producer.

Table no.2

	ROL/MWh				
	2000	2001	2002	2003	2004
<i>The difference between the selling price and the production cost on the regulated market</i>	-69,782	- 252,729	-470,225	-702,553	-208,600

*The source: Response to Supplementary information*

- (38) The volume of electric power energy sold by S.C. HIDROELECTRICA S.A. on the regulated market in the period 2000-2004 is presented in the table no.3:

Table no. 3

	MWh				
	2000 (realized)	2001 (realized)	2002 (realized)	2003 (realized)	2004 (foreseen)
Sold total electric power	15,000,473	14,609,672	16,245,828	15,457,872	15,250,000
Sold Electric power on	14,48,444	10,483,630	8,794,610	7,602,719	7,529,000

<i>regulated market</i>					
The weightness of sales in total production on regulated market	96.6%	71.8%	54.1%	49.2%	49.4%

*The source: Response to Supplementary information*

- (39) By comparing the information of table no.2 with the information of table no.3, it resulted that on the regulated market, S.C. HIDROELECTRICA S.A. registered in the period 2000-2004, per total sold production, a loss amounting ROL 14,707.7 billion caused by high difference between the production cost and the selling producer cost.

Table no. 4

	billion ROL					
	2000	2001	2002	2003	2004	TOTAL
<b>Losses registered as result of the difference between cost and price on the regulated market</b>	1010.8	2649.5	4135.5	5341.3	1570.6	<b>14,707.7</b>

*The source: Response to Supplementary information*

- (40) **On the competitive market**, in each year of the analyzed period, the production cost is lower than the selling price of electric power at producer, except 2003 when the price level was under production cost.

Table no.5

	ROL/MWh				
	2000	2001	2002	2003	2004
<i>The difference</i>	359,533	364,643	244,661	-87,957	260,513

<i>between the selling price and the production cost on the competitive market</i>					
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*The source: Response to Supplementary information*

- (41) The volume of electric power sold by S.C. HIDROELECTRICA S.A. on competitive market in the period 2000-2004 is presented in table no.6:

Table no. 6

	MWh				
	<b>2000 (realizat)</b>	<b>2001 (realizat)</b>	<b>2002 (realizat)</b>	<b>2003 (realizat)</b>	<b>2004 (preliminat)</b>
Sold total electric power	15,000,473	14,609,672	16,245,828	15,475,872	15,250,000
Sold electric power on competitive market	515,029	4,126,042	7,451,218	7,855,153	7,721,000
The weightness of sales in total production on competitive market	3.4%	28.2%	45.9%	50.8%	50.6%

*The source: Response to Supplementary information*

- (42) By comparing the information of table no.5 with those of table no.6, it resulted that on competitive market, S.C. HIDROELECTRICA S.A. registered in the period 2000-2004, per total production sold, a gain amounting 4,834 billion ROL caused by the difference between selling cost at producer and production cost.

Table no. 7

Billion ROL

	2000	2001	2002	2003	2004	TOTAL
The result of the difference between price and cost on the competitive market	185.2	1504.6	1822.9	- 690.9	2011.5	4,834

*The source: Response to Supplementary information*

(43) When comparatively assessing the results obtained from the sale of electricity on the two markets, it may be noticed that although on the competitive market profit is earned, it cannot cover the big loss registered by the company on the regulated market. Thus, the total result is negative, S.C. HIDROELECTRICA S.A. obtaining a loss from the sale of electricity in the period 2000-2004 of aprox. ROL 9,873.7 billion.

(44) In these conditions, it is considered that the state aid granted to S.C.HIDROELECTRICA S.A., amounting ROL 8,001.23 billion, partially covers the costs resulted from carrying out the service of general economic interest consisting in the production of electricity.

(45) The guaranteeing by the State of credits contracted by the company, the granting of budgetary credits and exemption from the payment of customs tax and VTA, exclusively in order to make investments of public interest, represent only a compensation of the fact that the company is committed to fulfil the public service of producing electricity. Due to the fact that the company sells electricity on the regulated market under costs, the company practically does not obtain sufficient revenues in order to finance these investments, requisite for continuous and safety functioning hydro-energetic system.

### **3.5. Condition from point 3.1. (d) is not fulfilled since:**

(46) Consigning to S.C. HIDROELECTRICA S.A. the service of general economic interest of producing electricity was not made through public tender.

(47) The carrying out of service of producing electricity was consigned to S.C. HIDROELECTRICA S.A. by Government Decree. In the conditions in which S.C. HIDROELECTRICA S.A. is the only undertaking from Romania that produces electricity in Hydro system, a comparable assessment could not be



made between the company's costs and the costs of a company acting in the same sector, well managed and having the proper technical endowment as to be capable to fulfil the requirements necessary to a public service. On the electricity market of Romania, other producers are also acting, but in the thermo or nuclear system (Termoelectrica, Nuclearelectrica, Electrocentrale etc.). But a comparison with these companies would not be relevant since they are also public undertakings that receive support from the State for fulfilling the obligation of services of general interest.

**(48)** Since the four conditions mentioned at point 3.1. are not cumulatively fulfilled, respectively the condition stipulated in point 3.1. d) could not be demonstrated, the support measures for S.C. HIDROELECTRICA S.A., notified by the Ministry of Public Finance, constitute State aid within the meaning of art.2 of the Law no. 143/1999 on State aid, with further modifications and completions, and of Regulation on State aid in the form of compensations granted to certain undertakings to which the carrying out of services of general economic service was consigned.

**(49)** The compensations granted in order to accomplish the service of general economic interest constitute state aid compatible with a normal competitive environment if the following conditions are cumulatively fulfilled:

**A.** The state aid is necessary in order to operate the service of general economic service;

**B.** The state aid does not significantly affect the trade between Romania and Member States of the European Union.

### **3.6. The necessity of granting the financial support**

**(50)** S.C. HIDROELECTRICA S.A. carrying out a service of general economic interest in view of safe functioning of the National Energetic System, satisfaction of consumption peak and ensuring the heat comfort of the population. The financial support measures have been granted for the rehabilitation and modernization of the existing electric power producing capacity and for framing the capacity under the environment norms of the European Union.

**(51)** The investments financed from budgetary credits are:

- Hydro energetic improvements;
- Finalization of the execution capacity and realization of the new capacities for production of the electric power;
- works for increasing safety level of the existing functioning capacities;
- works for the environment protection;
- works for the conservation of energy.

(52) The external credits guaranteed by the State in the base of G.O. no. 474/1997 modified through G.O. no. 652/ 1999, are destined to the rehabilitation of the electric power plant Portile de Fier I. The technical studies work out by the specialists showed that the technical condition of the groups was damaged in time as a consequence of running low the life duration of the equipments, of the intensive use and of functioning in various regimes of the electricity flows. This thing can anytime provoke damages by putting out of some groups for long period. Having in view all these technical elements and the importance of Hydro electric power plant Portile de Fier I for the National Energetic System, the re-technology of aggregates for the maintaining of annual production capacity and ensuring the continuous carrying out of the electric power production service are asked.

(53) By the rehabilitation and modernization of the hydro aggregates from Hydro electric power plant Portile de Fier I, there are envisaged: ensuring of the permanent function of the National Energetic System with 40% of the energy produced by S.C. HIDROELECTRICA S.A., representing 15% from the total electric power of Romania; the increase with 90 MW of installed power for all 6 Groups and functioning in conditions of competition and safety with European Energetic Interconented System.

(54) At present, for the hydro electric power plant in function, the average multi annual energy represents 51% of the potential that can be arranged, with a annual average value of 15,000 GWh/year. For the realization of the above-mentioned objectives, the average multi annual energy will be of 22491GWh/year, representing 66% of the potential that can be arranged.

### **3.7 The State Aid does not unduly affect the commerce between Romania and the Member States of EU**

(55) As it was showed at point 3.4. of the present project, the State Aid granted to S.C. HIDROELECTRICA S.A. represents only a compensation for the realization of

the projects of requisite investments for the accomplishment, in optimal conditions, of a service of general economic interest. On the Romanian market, there is no other producer of hydro system electric power. The other Romanian producers of electric power (nuclear and thermo system) are suppliers of services of general economic interest and are compensated by the State. Under these conditions, it is considered that the granting of State aid does not unduly distort the competition on the relevant market.

- (56) Since S.C. HIDROELECTRICA S.A. exports maximum 20% of its production, it is considered that the State aid granted to SC HIDROELECTRICA SA could affect the commerce with the Member states. Having in view that the company holds small shares on the market on which it exports (max. 3%) and that the state aid does not lead to the strengthen of S.C. HIDROELECTRICA S.A. position on the market, it being only a compensation for the accomplishment of a obligation of a general economic interest service, it is considered that the commerce with the Member States in not unduly affected.

### **3.8. There is no overcompensation**

- (57) The Competition Council underlines that the state aid granted to S.C. HIDROELECTRICA S.A. in the form of Governmental guarantees, budgetary allocations and exemption from the payment of customs tax and of VAT for equipments related to the objectives of investments, does not represent overcompensation since it does not exceed the costs incident to the obligation of service of general economic interest.
- (58) In this way, the conditions mentioned in point (49) are cumulatively fulfilled, conditions that are stipulated in the *Regulation on State aid in the form of compensations granted to certain undertakings to which the carrying out of services of general economic service was consigned* in order to evaluate that the support measures granted to S.C. HIDROELECTRICA S.A. Bucharest, representing compensations for fulfilment of service of general economic interest, constitute state aid compatible with a normal competitive environment.

## **IV. THE STATE AID'S ASSESSMENT**

- (59) The granting possibilities for the state aid S.C. HIDROELECTRICA S.A. is benefiting of, are the following:

- a) Exemption from the payment of the VAT and of the custom duties for the equipment imports relating with some investment objectives in the hydro-energetically system;
- b) Budgetary credits;
- c) Guarantees for external credits.

(60) The value of the obligations exempted from payment each year of the assessed period, is presented in the table no.9. The sums related to each year were calculated by the Ministry of Public Finance, as grantor, according to the provisions of the Custom Code and, respectively, to the methodology, in force, for calculating the VAT.

Table no. 9

ROL bill.

No. crt.	Granting period	Exemption custom duties	Exemption VAT	TOTAL EXEMPTIONS
1.	2000	23.76	33.67	57.43
2.	2001	16.59	114.90	131.49
3.	2002	16.02	96.90	112.92
4.	2003	19.18	74.77	93.95
5.	2004	-	44.22	44.22
6.	<b>TOTAL 2000-2004</b>	<b>75.55</b>	<b>364.46</b>	<b>440.01</b>

*Source: The notification from the Ministry of Public Finance*

(61) The sums allocated under the form of budgetary credits are divided on years in the following table:

Table no. 10

ROL bill.

No. crt.	Granting period	Budgetary Credits
1.	2000	764.72
2.	2001	1,034.40
3.	2002	1,062.79
4.	2003	854.90
5.	2004 -estimated	783.00
6.	<b>TOTAL 2000-2004</b>	<b>4,499.81</b>

*Source: The notification from the Ministry of Public Finance*

As the budgetary credits are granted to the society with a non-reimbursable title, their total value represent state aid.

- (62) The value of the external credits contracted by the company with the state guarantee are the following:

Table no. 11

No. crt.	The date of granting the guarantee	External credits	
		USD/ CHF	ROL equivalent
1.	1995	747,471 USD	24,906,481,191
3.	2002	27,970,484 CHF	740,015,095,188
		28,848,672.7 CHF	763,249,333,623.9
4.	2003	30,015,854.5 CHF	794,129,462,506.5
5.	2004	27,936,302.3 CHF	739,110,749,951.1
	TOTAL		3,061,411,122,460.5

*Source: The notification from the Ministry of Public Finance*

As the credits are obtained with 100% state guarantee and no other bank would have granted such a guarantee, the value of the state aid under the form of guarantee was assessed as being equal with the external credits' value, namely ROL 3,061.41 billion.

- (63) Taking into consideration the considerations from points (60)-(62), the total quantum of the state aid for S.C. HIDROELECTRICA S.A. is of ROL 8,001.23 bill. (ROL 440.01 + ROL 4,499.81 + ROL 3,061.41).

## DECIDES

**Art. 1.** The financial support measures notified by the Ministry of Public Finance, to be granted to S.C. HIDROELECTRICA S.A., constitute State Aid according to art.2 in Law no. 143/1999, regarding State Aid, modified and completed by the Law no.603/2003 and by the GO no.94/2004 regarding the reglementing of certain financial measures.

**Art.2.** The notified State Aid represents a compensation necessary for performing, under normal safety and comfort conditions, of the service of

general economic interest of electrical energy production, compensation which doesn't unduly affect the commerce between Romania and the Member States from the European Union.

**Art.3.** Based on art. 12 align. (2) letter. b) corroborated with art. 14 align. (1) letter. j) in the Law no. 143/1999, regarding State Aid, with all the subsequent modifications and completions, it is authorized the State Aid for S.C. HIDROELECTRICA S.A. Bucharest, granted by the GO no. 24/1994, GO no. 41/1995, *GD no. 474/1997*, modified by the GD no. 652/1999, Law of Public Debt no. 81/1999, the EGO no. 247/2000, the Law of State Budget for 2003 no. 631/2002, the Law of State Budget for 2004 no. 507/2003, as state aid designated to the accomplishment of the service of general economic interest in safety and comfort conditions.

**Art.4.** According to the provisions of art.24 in the Law no.143/1999, with the subsequent modifications and completions, the Ministry of Public Finance shall submit every year to the Competition Council information referring to the State Aid granted to S.C. HIDROELECTRICA S.A, for its monitoring.

**Art.5.** The present decision becomes applicable at the date of its communication.

**Art.6.** According to the regulations of Article 29 of Law no. 143/1999, regarding the State Aid, with the subsequent modifications and completions, the present decision can only be contested in the Court of Law, Bucharest, the Administrative Contentious Section, within 30 days from its communication.

**Art.7.** The present decision will be transmitted by the General Secretariate of the Competition Council:

- Ministry of Public Finances Strada Apolodor nr. 17, sector 5, Bucuresti;
- S.C. HIDROELECTRICA S.A., 3 Constantin Nacu St, Sector 2, Bucharest.

**Art. 8.** The General Secretariat and the Department of State Aid with the Competition Council will apply the present Decision .

**PRESIDENT**

**MIHAI BERINDE**