

DECISION OF THE COMPETITION COUNCIL
no 301 on 09.11.2004

**regarding the notification of the Ministry of Public Finances, referring
to the financial support measures for the Underground Transport
Commercial Company „Metrorex S.A.”**

COMPETITION COUNCIL,

Taking into account the provisions of the Decree no.57/2004 for the appointment of the Competition Council's members,

Taking into account the provisions of the Law no. 21/1996, published in the Official Monitor no.88, Part I, on 30.04.1996, modified and completed by the EGO no.121/2003, approved by the Law no. 184/2004,

Taking into account the provisions of the Law no. 143/1999 regarding the State Aid, published in the Official Monitor of Romania, Ist Part, no. 370 form August the 3rd, 1999, modified and completed by the Law no. 603/2003 and by the EGO no.94/2004 regarding the reglementing of certain financial measures.

Taking into account the disposals of the European Agreement regarding a partnership between Romania and the European Communities and their member states, ratified by the Law no. 20/1993, published in the Official Monitor of Romania no.73, Part I, on 12.04.1993,

Taking into account the Regulation regarding the State Aid under the form of compensations, granted to certain undertakings entrusted with the carrying out of services of general economic interest

Based on the following reasons,

I. THE PROCEDURE

(1) By the address no. 107563/08.03.2004, registered at the Competition Council with no. RS-AS 23/12.03.2004, the Ministry of Public Finances submitted to the Competition Council, based on art.6 in the Law no.143/1999 regarding the state aid, with the subsequent modifications and completions, the notification of the financial support measure for the **Underground Transport Commercial Society „Metrorex S.A.”**(named S.C Metrorex S.A)

(2) Due to the fact that the data presented in the notification were not complete, additional information was requested. Following the assessment of the last information submitted on 28.05.2004, registered at the Competition Council with DAAS no.380/31.05.2004, it resulted that these are not conclusive. Therefore,, by the Order of the President of the Competition Council no. 187/27.07.2004, in the basis of art.8 align.(4) in the Law no.143/1999 with the subsequent modifications and completions, it was started the investigation having as object the assessment of the support measure for SC Metrorex SA, notified by the Public Finance Ministry.

(3) By the address of the Competition Council CC no. 2002/19.08.2004 new supplementary information were requested, the answer being transmitted by the address no. 58.01.06/184/25.08.2004. At the Competition Council's headquarters, on 25.08.2004, it also took place discussions with the representative of SC Metrorex SA.

(4) By the address of the State Aids Authorization Department no. 683/08.09.2004 and no.692/09.09.2004 other supplementary data were requested to SC Metrorex SA, and the answer came by the address no 58.01.06/201/2004 registered at the Competition Council with DAAS no.686/16.09.2004, no.58.01.06/202/2004 registered at the Competition Council with DAAS no.687/16.09.2004 and no.58.01.06/204/2004 registered at the Competition Council with DAAS no.688/16.09.2004.

II. DESCRIPTION OF THE FINANCIAL SUPPORT MEASURE

2.1. State Aid forma

The financial support for S.C. „Metrorex” S.A. Bucuresti consists in:

- Guarantee granted by the State for obtaining of external loans designated for the funding of the Project for Modernizing the Bucharest Subway;
- external loans designated for the funding of the Project for Modernizing the Bucharest Subway, I stage and IIInd stage;
- subsidies;
- participations with capital from the State.

2.2. The beneficiary of the support measure received from the State

The beneficiary of the support measure received from the State is SC Metrorex SA, commercial society on shares, with capital entirely owned by the State, and which, according to Art. 1, paragraph 3 in the *Governmental Decision no. 482/1999, regarding the establishing of the S.C Metrorex S.A.*, develops mainly activities of **public and strategically interest**, is organized and functioning under the supervision of the Ministry of Transports.

2.3. The manner of granting of the financial support measures

2.3.1. By the **Government Ordinance no. 31/1997**, approved by Law no. 201/1997, the *Loan Agreement between Romania, the European Bank of Investment and the S.C Metrorex S.A.*, signed in Luxembourg and in Bucharest, on the 18th and the 20th of December 1996, and the *Loan Agreement between Romania, the European Bank of Investment and the S.C Metrorex S.A.*, signed in Luxembourg and in Bucharest on the 25th of March and the 27th of March 1997, were ratified.

The loan agreements have as object the funding of the Project for modernizing the subway from Bucharest- Ist stage, each of them in amount of the equivalent of EURO 20 million.

2.3.2. By the **Government Ordinance no. 60/1999**, approved by Law no. 15/2000 the *Loan Agreement between Romania, the European Bank of Investment and the S.C Metrorex S.A., regarding the finance of the Bucharest Underground Modernization Project- Ist stage*, signed in Luxembourg and in Bucharest on the 8th and the 9th of June 1999 was ratified, agreement referring to an amount of the equivalent of Euro 60 millions.

2.3.3. By the *Government Decision no. 909/2002*, the amendments agreed upon in Luxembourg, on the 22nd of February, and in Bucharest on the 2nd of April and the 11th of June, between the Romanian Government and the Public Finance Ministry, the European Bank for Investments and the S.C. Metrorex S.A, to the *Loan Agreements between Romania, the European Bank of Investment and S.C Metrorex S.A* were ratified. According to these amendments the technical description to the Loan Agreements for the Bucharest Underground Modernization Project, stage I, was modified.

2.3.4. The Modernization Project of the Bucharest subway – Ist Stage, had the following objectives:

- the finishing of the line Gara de Nord – 1 Mai;
- acquisition of rolling material.

The initial period for the implementation of the project is 1997- 2001.

As a result of the modifications of the Technical Description of the Project, ratified by the GD no.909/22.08.2002, the Modernization Project of the Bucharest subway – Ist stage consists in:

- extension of the line Gara de Nord- 1 Mai;
- finalizing the construction workings for preserving the existent infrastructure of Line 4 between 1 Mai – Zarea (2.6 km length)
- acquisition of rolling material;
- other components;

The new implementation period for the project is 1997- 2003.

2.3.5. The stage of the implementing the Modernizing Project of the Bucharest Subway- Ist stage:

- extinction of the line Gara de Nord – 1 Mai was realized 100%.

The thoroughfare Gara de Nord – 1 Mai started to function with passengers on March the 1st, 2000.

- finalizing the construction workings for maintaining the existing infrastructure on the Line 4 between 1 Mai – Zarea (in length of 2.6 km) realized in proportion of 72%, representing:
 - realizing the water network in Bucurestii Noi;
 - organizing building yards and equipment drillings for the depressuring and execution of the tunnel;
 - release of the site (gas, water ditch, channel, etc)
- acquisition of rolling material realized 100%. The 18th new wagons of subway were acquisitioned.

- other components realised in proportion of 53% representing: corner iron, lightening the car shed, the third rail, interlocking system and central dispatching, etc.

2.3.6. The funding of the project of modernization of the Bucharest Subway, Ist stage

The cost of the project is Euro 207.7 mill., and it has as funding sources the following:

- the European Bank for Investments- loan in amount of Euro 100 mill. granted in three instalments, respectively Euro 20 mill, Euro 20 mill and Euro 60 mill;
- the State Budget – Euro 107.7 mill.

The source of covering the loan is the state budget, through the Ministry of Transport, Constructions and Tourism.

The granting period for the BEI credits is 20 years, from which 5 years grace period.

The reimbursement period:

- Mai the 31th, 2002 – November the 30th 2016 for:
 - Credit no.19297 – Euro 20 mill/18/20.12.1996;
 - Credit no.19417– Euro 20 mill/25/27.03.1997.
- November the 30th 2004 – May the 31st 2019 for:
 - Credit no.FI 20.108- Euro 60 mill/8/9.06.1999.

As the Romanian state's contribution to the financing plan of the Modernization Project for the Bucharest subway – Ist stage, provisioned at Euro 107.7 mill., cannot be ensured in totality from the state budget, between S.C Metrorex S.A and Svenska Handelsbanken AB was signed the Loan Ageement no.58.01.01/3075/13.04.2000 for the funding of the contract no.58.01.10./025/1999, having as object the “Designing, Manufacturing and Delivering of 18 new trains of subway, spare parts, maintaining equipment, the equipment of the rolling way with fixed installations for ATP and ATO designated for Line 2 of the Bucharest subway.

The credit's value – 47,000,000 (credit) and 5,303,874 (85% from the first ENK guarantee financed within the project) .

The date of signing the Loan Agreement – 13.04.2000.

The ratifying document for this loan is the ***Government Decision no.205/2000*** regarding the guarantee by the Ministry of Public Finance an external credit for S.C Metrorex S.A.

The lender is S.C Metrorex S.A., having the guarantee of the Ministry of Public Finance.

The source for covering the credit, including interests, commissions and other related costs is the state budget, through the budget of the Ministry of Transport, Constructions and Tourism.

The granting period of the credit is of 10 years, the reimbursement period being 31.10.2003- 30.04.2013.

The credit was entirely utilised and represented the Co-financing for the acquisition of 18 subway trains within the Modernizing Project of the Bucharest Subway- Ist stage.

2.3.7. By the *Law no. 438/2001*, it was ratified *the Loan Agreement between Romania, the European Bank of Investment and the S.C Metrorex S.A., regarding the finance of the Bucharest Underground Modernization Project, stage II*, signed in Bucharest on the 6th of November 2000, in amount of the equivalent of Euro 115 milions.

The Bucharest Underground Modernization Project, stage II, has the following objectives:

- finalizing the construction works for preserving the existing infrastructure from Nicolae Grigorescu Station to Linia de Centura;
- the acquisition of 20 new subway trains and the modernization of the traffic control system on Artery 1 and 3:
 - modernizing the electrical and electronic equipment on Artery 1 and 3;
 - modernizing the existing maintenance workshops.

The implementing period for the project is 2001- 2006.

2.3.8. The stage of implementing the Bucharest Underground Modernization Project, stage II :

- finalizing the construction workings for maintaining the infrastructure existing from Nicolae Grigorescu Station to Linia de Centura - realized in 54.6%, representing the depressuring and calking the tunnel, making the structures from the stations and tunnels; consolidating the tunnel, etc.
- acquisition and putting into work of 20 new subway trains and the modernization of the traffic control system on Artery 1 and 3 :
 - modernizing the electrical and electronic equipment on Artery 1 and 3;
 - modernizing the existing maintenance workshops, realized 0.4%.

The tender's documents for the acquisition of 20 trains received an avis from the European Bank for Investments, the tender is to take place on 27.09.2004.

The tender's documents for making compatible the installations for automatizing the traffic on the Artery 1 and 3 received an avis from the European Bank for Investments, the tender is to take place on 8.11.2004.

2.3.9. The financing of the Modernizing Project of Bucharest Subway, IInd stage

The cost of the project, the IInd stage, rises up to euro 231 mil. and is financed by :

- The European Bank of Investments - loan in amount of Euro 115 mil.;
- the state budget - Euro 116 mil.

The source for covering the loan is the state budget, through the budget of Ministry of Transport, Constructions and Tourism.

The period on which the loan was granted is of 20 years, from which 5 year grace period.

The credits are to be reimbursed between 15.03.2006 and 15.09.2020.

All the contracted credits for the modernization and rehabilitation projects for the Bucharest subway, stages 1 and 2 are guaranteed by the Ministry of Public Finance and the reimbursement is made by S.C Metrorex S.A. from sums from the state budget having this designation, allocated to the Ministry of Transport, Constructions and Tourism.

The sums received by S.C Metrorex S.A for the reimbursement of the external loans are granted in the basis of the **Law of the public debt no.81/1999** and of the **Law of the State budget**.

2.3.10. According to the Law no. 507/2003, regarding the State Budget for 2004 the sums provisioned for S.C Metrorex S.A from the state budget, also find in the Incomes and Expenses Budget approved for the year 2004 for the company, were the following:

	thousand Rol
A. Subsidies for underground passengers transport	1,293,700,000
B. Reimbursements of external credits and payments of interests and commissions, total from which:	923,739,000

- external credits reimbursements	441,134,000
- payments of interests and commissions	482,605,000
C. Funding sources for the investments	3,543,753,000
- capital expenses	1,691,503,000
- cashings of external credits	1,852,250,000
TOTAL (A+B+C)	5,761,192,000

Allocating the sums to the S.C Metrorex S.A is made by the Ministry of Transport, Constructions and Tourism, the company is subordinated to. According to the last modification of the budgetary indexes, received by S.C Metrorex S.A through the address no.25/3494/01.09.2004 from the Ministry of Transport, Constructions and Tourism, the sums allocated for S.C Metrorex S.A for the year 2004 were modified as it follows:

Thousand ROL

A. Subsidies for underground passengers transport	1,293,700,000
B. Reimbursements of external credits and payments of interests and commissions, total from which:	854,439,000
- external credits reimbursements	473,134,000
- payments of interests and commissions	381,305,000
C. Funding sources for the investments	3,215,199,226
- capital expenses	1,691,503,000
- cashings of external credits	1, 523,696,226
TOTAL (A+B+C)	5,363,338,226

Excepting from the abovementioned sums, the S.C Metrorex S.A also benefits from the State budget (through the Ministry of Transport, Constructions and Tourism budget) by the compensation of the gratuitousness granted for the war veterans, the revolution heros, as well as the compensation of 50% from the commutation tickets granted to the graders and students, according to the number of effected travels. These sums are found in the Incomes and Expenses Budget of the company at the

chapter “Incomes from other sources” and are monthly granted in a quantum equivalent to the number effected travels.

For the year 2003 S.C Metrorex S.A received from the state budget the sum of ROL 44,773,846 thousand, representing compensations granted to the war veterans, the revolution heros, graders and students.

For the year 2004 S.C Metrorex S.A provisioned in the approved Income and Expenses Budget, at the chapter “Incomes from other sources”, the amount of ROL 45,000,000 thousand.

2.3.11. According to the *Government Decision no.1103/2004 regarding the approval of the List of Economic Agents under the authority of the Ministry of Transport, Constructions and Tourism which benefits by the provisions of art.22 in the Law of the State Budget for the year 2004 no.507/2003*, in the completion of the subsidies granted from the state budget, S.C Metrorex S.A is exemptioned from the payment of the obligations towards the State Consolidated Budget in amount of ROL 291,355 mill. The amounts object of the exemption are monthly established by common order of the ministry of transport, construction and tourism and the ministry of public finance and is underlined in the undertaking’s accountability according to the applicable accounting provisions.

2.3.12. The sums received by S.C Metrorex S.A from the State budget, approved by the State Budget Law and by the GD no.1103/2004 had the following destinations:

- a) **transfers from the State budget (subsidies) and exemptions from payment** cover the difference between the total costs of the company (related to the persons transport activity) and own incomes. These sums compensate the difference between the real cost of the subway travel and the reglemented tariff;
- b) **reimbursments of external credits and payments of interests and commissions to the external credits** – sums allocated from the State budget for the payment of the credits contracted by the company with the avis of the Ministry of Transports, Constructions, and Tourism and that of Public Finances Ministry and guaranteed by the Romanian Government;
- c) **investments funding sources**– sums necessary for the carrying out of the projects for modernizing and developing the infrastructure and the rolling material.

2.4. Received state aids

2.4.1. According to the data presented in the notification, S.C Metrorex S.A has benefitted of State Aid, during the last 3 years, as it follows:

<u>No.</u>	<u>The type of State Aid</u>	<u>Total value of the State Aid for 2001-2003(mil.Rol)</u>
<u>1.</u>	<u>Transfers from the State Budget (subventions)</u>	<u>2,819,500.000</u>
<u>2.</u>	<u>Reimbursement of external credits, interest payments and commissions for exploitation</u>	<u>133,310.786</u>
<u>3.</u>	<u>Reimbursement of external credits, interest payments and commissions for investments</u>	<u>717,907.281</u>
<u>4.</u>	<u>Finance sources for the investments</u>	<u>4,362,677.918</u>
	<u>a) self sources</u>	<u>33,212.421</u>
	<u>b)allotments from the budget for investments</u>	<u>1,507,549.593</u>
	<u>c) external credits</u>	<u>2,821,915.904</u>

2.4.2. The sums received by the company for the last three years, from the State budget, approved by the State Budget Law, had the following destinations:

- a) transfers from the State budget (subsidies) cover the difference between the total costs of the company (related to the persons transport activity) and own incomes. These sums compensate the difference between the real cost of the subway travel and the reglemented tariff;
- b) reimbursements of external credits and payments of interests and commissions to the external credits – sums allocated from the State budget for the payment of the credits contracted by the company with the avis of the Ministry of Transports, Constructions, and Tourism and that of Public Finances Ministry and guaranteed by the Romanian Government;
- c) investments funding sources– sums necessary for the carrying out of the projects for modernizing and developing the infrastructure and the rolling material.

2.4.3. In the data transmitted by the company to the Competition Council it is underlined that, in the last 5 years, SC Metrorex SA received subsidies from the State budget, in amount of up to 75% from the sums grounded in the Budget project of Incomes and Expenses, being forced every year to adopt measures for decreasing the expenses by delaying the executions of a number of workings (lightening, ventilation, rolling stairs, etc.). In 2002 this level was not reached as it wasn't allocated the whole amount from the State

budget, the difference being covered by short term credits, reimbursed in 2003.

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

3.1. 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 compeltions, if the following conditions are met cumulatively:

- the obligation of carrying out a service of general economic interest is entrusted by a normative/ administrative act and it is clearly defined;
- 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;
- 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;
- 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 fulfilment of the obligation of service of general economic interest.

3.1.1. The obligation to carry out a service of general economic inteerest is entrusted through a normative/administrative act and it is clarly defined

3.1.1.1. According to Art. 1, paragraph 3 in the Governmental Decision no. 482/1999, the Underground Transport Commercial Society „Metrorex” S.A. is a shareholder society, state fund only, conducting **mainly activities of public and strategic interest**, under the supervision of the Ministry of Transports, Constructions and Tourism.

The State, as a sole shareholder, exerts its rights and obligations through the Ministry of Transports, Constructions and Tourism.

3.1.1.2. Article 4, paragraph (1) of GD no.482/1999 settles Metrorex' activity. Thus, Metrorex conducts underground and terrestrial persons transport **in conditions of safe traffic**, in order to satisfy the public interest and the social and **civil protection**, and its object of activity consists of:

a) assuring the exploitment, maintenance and repairing of the equipment in use, of the railway net, of the fixed installations, the electrical installations, automatic and telecommunication installations, signaling, centralization, automatic block of lines, dispatcher, ventilation installations, heating system, sanitary installations, water suppliers and sewerage, escalators, railways, cassettes and tunnels, stations and additional constructions, civil protection installations, technological and non-technological spaces, and other installations;

b) investing to extend and modernize the underground network, the infrastructure, the equipment in use, negotiating and signing contracts for investments, acquisitions, works, services, and capitalizing goods and active resources.

c) ensuring civil protection in case of disasters ;

d) developing marketing, foreign affairs and international trade by cooperating with other underground administrations and by maintaining a close relationship with all the related international agencies;

e) negotiating and signing contracts and conventions in its field of activity with banks and other financial institutions.

3.1.1.3. According to Article no. 5, paragraph (2) of the GD no. 482/1999, underground passengers transport is a social public service.

3.1.1.4. Article 7 of G.D. no. 482/1999 states that all the investments for the projects of modernization and development of the infrastructure and the equipment in use are financed by the state budget or by credits guaranteed and reimbursed by the state. The same stipulations apply to the civil protection objectives, and the allotted sums are mentioned distinctively in the Income and Expenses Budget of S.C Metrorex S.A.

Thus, based on the G.D. no.482/1999, the S.C Metrorex S.A. fulfills a service of general economic interest, in the meaning of art.3⁸ in the Law no.143/1999 regarding the state aid, with the subsequent modifications and completions.

3.1.2. *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*

3.1.2.1. The tarif of a subway travel is established according to the provisions of the legislation in force, namely according to EGO no. 36/2001 *regarding the regime of the reglemented prices and tarifs established with the Competition Office's avis, with the subsequent modifications and completions.*

In the basis of EGO no.36/2001, the possible tarif majorations cannot be made unless after a minimum period of 3 months from the last majoration , under the conditions of the increase of the environmental average index of consumption prices of at least 5% from the last tariffary majoration.

Taking into consideration the necessity of social protection insurance, as the public persons transport by subway has a public social service character, the increase of the average tarif is situated under the level of consumption prices index.

3.1.2.2. According to Article no. 5 paragraph (2) of the GD no. 482/1999, for the underground passengers transport, SC Metrorex SA receives from the State Budget transfers to cover the diferences between its own income from the activity of passengers transport and the total expenses, including the expenses determined by exploitation, maintenance and repairing the civil protection objectives, which will appear distinctively in its income and expense budget.

3.1.2.3. Art.6 of the GD no.482/1999 provide that, when carrying out public services of persons transport for certain cathegories of persons, which beneficiate, according to the legal regulations, of transport tarifs reductions and of free of charge, by the normative acts which grant these facilities shall be provisioned compensations for SC Metrorex SA up to the level of the approved tarif.

3.1.2.4. Article 5, paragraph (3) of G.D. no. 482/1999 states that, in case of state interests, including military ones, if special works or services will be needed, their beneficiaries, together with the Ministry of Transports, Constructions and Tourism, supervised by the Ministry of Public Finances, will suggest changes of the SC Metrorex SA' budget and ways of covering the extra expenses which will be approved according to the law.

3.1.2.5. Before the beginning of each financial exercise, SC Metrorex SA sets an income and expense budget which is analyzed and approved by the Ministry of Transports, Constructions and Tourism, the Ministry of Public Finances and then by the Romanian Government.

In the incomes and expenses budget of the company two major types of activity are distinctively presented:

- exploitation of all the underground means of transport, including income, expenses for passengers transport in safe conditions, and the result of the financial exercise;
- investments, including the finance sources for modernization, technology, acquisition of equipment and raw materials and extending the railway network.

The two activities are independently analysed:

- 1) The exploitation activity presented in the first part of the income and expense budget has the following structure:

a) Total expenses are the sum of the following:

- expenses with raw materials, spare parts, protection and work equipment, uniforms, etc., requested by each department and according to its programme in order to ensure traffic safety and a good functioning of the technical installations;
- electricity, heating and water costs;
- salaries and budget taxes;
- the cost of external repairs and train maintenance;
- other expenses (social, cultural and protocol, etc)

b) The total income is the sum of the following:

- **Own incomes** of the company:
 - The income from passengers transport obtained by multiplying the estimated number of passengers with the average ticket price;
 - Incomes from renting spaces and association;

- Subventions (transfers) from the state budget are set by subtracting the own income from the total expenses mentioned previously.

c) The result of the financial exercise in the income and expense budget can only be zero.

2) The activity of investments, presented in the Income and Expense Budget, mentions the finance sources of the approved investment programmes by the Ministry of Transports, Constructions and Tourism, which are split in underground modernization projects and other investments in the underground railways.

The finance sources of the investments have the following structure:

- self sources which are constituted at the level of amortisation expenses, used to pay for certain projects and equipment.
- budget allotments
- external credits.

During the financial exercise, the incomes and expenses budget of S.C. METROREX S.A can be modified, depending on the incomes realised in the first 6 months of the year and on the state budget's resources, so that the result of the financial exercise is zero.

This way, when rectifying the Law of the annual budget of Romania can be approved modifications regarding the incomes and expenses budget of S.C. METROREX S.A, company in the subordination of the Ministry of Transport, Constructions and Tourism. At point 3.1.3. are presented in a table the figures enclosed by the Draft of Incomes and Expenses Budget of S.C. METROREX S.A, submitted for approval to the Ministry of Transport, Constructions and Tourism, for the year 2003, the figures provisioned in the approved Budget, as well as the modifications enclosed by the Rectified Budget, modifications brought by the Law of rectifying the state budget for 2003, as well as the same situation for 2004.

Thus, we can conclude that the parametres for calculating the compensation are established annually, in advance, for the next financial exercise, following an objective and transparent procedure, in order to avoid offering any economical advantage to the beneficiary.

3.1.3. 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

3.1.3.1. For the last 5 years S.C. METROREX S.A. has received subventions of 75 % of what was stated in the budget project of Incomes and Expenses, being forced every year to take measures for reducing the expenses by postponing a series of works at the illumination, ventillation and escalator installations, and others.

3.1.3.2. In the table no.1, from above, are underlined synthetic the figures enclosed by the Draft of Incomes and Expenses Budget, submitted for approval to the Ministry of Transport, Constructions and Tourism, for the year 2003, the figures provisioned in the approved Budget, as well as the modifications enclosed by the Rectified Budget, modifications brought by the Law of rectifying the state budget for 2003.

In the table no.2, are underlined synthetic the figures enclosed by the Draft of Incomes and Expenses Budget, submitted for approval to the Ministry of Transport, Constructions and Tourism, for the year 2004, the figures provisioned in the approved Budget, as well as the modifications envisaged by the Rectified Budget, modifications that will be brought by the Law of rectifying the state budget for 2004.

ECONOMICAL – FINANCIAL SITUATION OF S.C. METROREX. S.A. FOR 2003

**- ROL
thousand-**

Indicators	BVC 2003					
	Proposed Program	approved BVC	Differences	Rectified BVC	Realized	Differences
0	1	2	3=2-1	4	5	6=5-4
A. Current activity- subway passengers' transportation						
I. total incomes, (a+b+c+d), from which :	543,900,000	741,998,000	198,098,000	741,998,000	730,510,805	-11,487,195
a) incomes from the trnasport activity (a1 x a2)	470,400,000	470,400,000	0	470,400,000	404,351,738	-66,048,262
a1) average tarif - ROL/traveling	4,200	4,200	0	4,200	3,848	-352
a2) no. Transported passengers	112,000,000	112,000,000	0	112,000,000	105,083,425	-6,916,575
b) incomes from other activities (lending spaces, advertising and publicity)	32,000,000	32,000,000	0	32,000,000	133,124,013	101,124,013
c) incomes from the exemption from the payment obligations toward the consolodated state budget, according to GO no. 87/2003		198,098,000	198,098,000	198,098,000	148,261,208	-49,836,792
d) incomes from the compensation of the gratuitousnesses granted to the war veterans, revolution heros, 50% pupils and students	41,500,000	41,500,000	0	41,500,000	44,773,846	3,273,846
II. total expenses , (a+b), from which :	2,096,281,563	2,096,281,563	0	1,951,498,000	1,940,010,805	-11,487,195
a) material expenses (materials, spare parts, energy, workings and services to third parties	1,201,912,880	1,201,912,880	0	1,067,608,819	1,061,185,933	-6,422,886
b) other expenses (personnel, socio-cultural, protocol etc.)	894,368,683	894,368,683	0	883,889,181	878,824,872	-5,064,309
III. the difference to be covered(II - I), from which	1,552,381,563	1,354,283,563	-198,098,000	1,209,500,000	1,209,500,000	0
Subsidies from the state budget	1,552,381,563	709,500,000	-842,881,563	1,209,500,000	1,209,500,000	0
- the real cost of the subway transport (ROL /travel)	18,717	18,717	0	17,424	18,462	1,038

((total expenses / no. Transported passengers)						
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B. Investments	Proposed Program	approved BVC	Differences	Rectified BVC	Realized	Differences
TOTAL , from which :	5,264,711,106	2,651,485,720	2,613,225,386	2,977,075,720	2,898,386,701	-78,689,019
a) own sources	70,000,000	70,000,000	0	70,000,000	21,004,000	-48,996,000
b) budgetary allocations	1,502,644,838	717,935,720	-784,709,118	717,935,720	717,421,145	-514,575
c) external credits cashed in	3,692,066,268	1,863,550,000	1,828,516,268	2,189,140,000	2,159,961,556	-29,178,444

Table no.1.

ECONOMICAL –FINANCIAL SITUATION OF S.C. METROREX. S.A. FOR 2004

- ROL thousand -

Indicators	BVC 2004			
	Proposed Program	approved BVC	Differences	BVC updated(proposed)
0	1	2	3=2-1	4
A. Current activity- subway passengers' transportation				
I. total incomes, (a+b+c+d), from which :	568,700,000	829,700,167	261,000,167	873,055,000
a) incomes from the trnasport activity (a1 x a2)	474,600,000	474,600,000	0	474,600,000
a1) average tarif - ROL/traveling	4,200	4,200	0	4,200
a2) no. Transported passengers	113,000,000	113,000,000	0	113,000,000
b) incomes from other activities (lending spaces, advertising and publicity)	49,100,000	49,100,000	0	62,100,000
c) incomes from the exemption from the payment obligations towards the consolodated state budget, according to art.22 in the Law of the state budget for 2004, no.507/2003		261,000,167		291,355,000
d) incomes from the compensation of the gratuitousnesses granted to the war veterans, revolution heros, 50% pupils and students	45,000,000	45,000,000	0	45,000,000

II. total expenses , (a+b), from which :	2,388,749,982	2,123,400,167	-265,349,815	2,166,755,000
a) material expenses (materials, spare parts, energy, workings and services to third parties)	1,370,349,753	1,200,686,860	-169,662,893	1,128,847,000
b) other expenses (personnel, socio-cultural, protocol etc.)	1,018,400,229	922,713,307	-95,686,922	1,037,908,000
III. the difference to be covered(II - I), from which	1,820,049,982	1,293,700,000	-526,349,982	1,293,700,000
Subsidies from the state budget	1,820,049,982	1,293,700,000	-526,349,982	1,293,700,000
- the real cost of the subway transport (ROL /travel) ((total expenses / no. Transported passengers)	21,139	18,791	-2,348	19,175

B. Investments				
TOTAL , from which :	5,732,524,280	3,643,753,000	-	3,315,199,226
a) own sources	100,000,000	100,000,000	0	100,000,000
b) budgetary allocations	2,087,194,280	1,691,503,000	-395,691,280	1,691,503,000
c) external credits cashed in	3,545,330,000	1,852,250,000	-	1,523,696,226

Table no.2

As it can be seen from the table no.1, the result of the financial exercise of S.C. METROREX. S.A for 2003 was zero. The sums received from the state budget covered the difference between the total incomes and the total expenses.

As far as the investment activity on 2003 is concerned, S.C. METROREX S.A couldn't fund from its own sources but the amount of ROL 21,004,000 thousand, in comparison with the sum submitted and approved in the Rectified budget. Also, S.C. METROREX. S.A didn't received from the state budget the amount of ROL 29,178,444 thousand.

As it results from the table no.2, in 2004, according to the approved Incomes and Expenses Budget, as well as to the Draft of the rectified budget (updated) S.C. METROREX. S.A shall receive from the state budget the difference between the total incomes and the total expenses, so that the financial result shall be zero.

3.1.3.3. The elaboration of the Incomes and Expenses Budget of the company was made based on the incomes and expenses' fundamenting, for carrying on the activity of exploiting the subway, for passenger transportation in safety and continuity conditions.

3.1.3.4. This objective determined an important growth of the exploitation expenses in 2003, in comparison to 2002, taking into account the increase of self income, as a result of several failures of the previous years, especially in what concerns repairs and maintenance of the equipment, the technological installations and infrastructure.

In 2002, the company cut the maintenance and repairs expenses, as the transfers granted by the Law of State Budget for 2002, no. 743/2001 and the Governmental Ordinance no. 144/2002 represent approximately 72.2% of the necessary transfers estimated in the Expenses and Incomes Budget for 2002.

A. Incomes

The incomes from transport activity grew in 2003 with 21.1% in comparison with 2002, as a result of traffic increase, by reorganization of the traffic, access control, and of a prognosis of a higher average tarif from 3500 ROL/travel in 2002 to 4200 ROL in 2003, according to the price growth index forecast. Taking into account the need of social protection, the average price is still under the level of the price growth index. So, in 2003 the average tarif was of ROL 3,848 compared to the real consumption of the subway travel of ROL 18,462.

B. Expenses

The expenses for 2003 were established according to «The Statements concerning the budget proposals for the state budget projects, state social insurance budgets, and special funds budgets for 2003 and the estimations for 2004-2006», issued by the Ministry of Public Finances under no. 120.972/22.05.2002.

The total expenses increased with 26 % in 2003 in comparison with 2002, as a result of the price growth of the main spare parts and components needed for repairs and revisions of the equipment in use and the technological installations, as it follows: the replacement of electrical platform separators, improvement of light installation in public places, replacement of the 220 V c.c. rectifiers, and spare parts for the escalators, fans and air pumps, replacement of the worn-out railway, crossovers, etc.

Due to the austerity of the budget for 2002, the company was forced to reduce the consumption of raw materials and spare parts, intensifying at the same time the periodical revisions, as well as the reconditioning, in order to keep the underground operational under safe conditions. The company could not take the same actions in 2003, and this was the reason for increased expenses, as certain parts and equipments had to be replaced. The costs of electricity, heating and water supply also grew by over 33%.

The amortisation expenses are calculated according to the data for 2003 and the investments programme.

The expenses with the gross salaries, which represent 30 % of the total expenses, grew with 19 % in 2003, in comparison with 2002.

C. Transfers

The value of the transfers conceded by the *Law of State Budget no. 631/2002 for the year 2003* represents 79 % of the sum granted in 2002 and 44.5 % of the necessary funds, the difference being provisioned at the position incomes from other sources.

Starting with 2004, as the underground modernization projects have been applied (new trains, modernization of the existing railways, etc.) the subventions from the state budget will be diminished.

Therefore, for SC Metrorex SA, the compensation doesn't overpass what is necessary to partially cover the costs for the general economical service of passenger transport by subway, taking into account the relevant

incomes. In order to fulfill these obligations, the profit of the company is not taken into account, and the total incomes of the company are equal to the total expenses. As a consequence the support measures for SC Metrorex SA, notified by the Ministry of Public Finance, do not constitute an overcompensation for carrying out the service of general economic interest.

3.1.4. 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 fulfilment of the obligation of service of general economic interest.

3.1.4.1. The endowment of the service of general economic interest of passengers transport with the subway towards SC Metrorex SA wasn't made through a public tender.

3.1.4.2. Carrying out the public passengers transport with the subway in Bucharest was entrusted by the GD no.482/1999, to SC Metrorex SA. The beneficiary didn't submit such a comparative analysis, in order to demonstrate the fulfilling of this condition. In August 2004, the cost of one travel with the Bucharest subway, established according to EGO no.36/2001, is ROL 9,000, the equivalent of Euro 0.20 (at the exchange rate of ROL 41,000 for one Euro), and is under the real cost of Euro 0,45 per travel.

3.2. As the four conditions mentioned at point 3.1. are not cumulatively met, respectively the condition provisioned at point. 3.1.4. couldn't be proved, the support measures for SC Metrorex SA notified by the Ministry of Public Finance constitutes State Aid under the meaning of art.2 in the Law no.143/1999 regarding the State Aid, with the subsequent modifications and completions, and of the Regulation regarding the state aid under the form of compensations granted to certain undertakings entrusted with the obligation of carrying out a service of general economic interest.

3.3. The compensations granted for carrying out the service of general economic interest constitutes State Aid compatible with the normal competitive environment if there are cumulatively met the following conditions:

3.3.1. The State Aid is necessary for carrying out the service of general economic interest;

3.3.2. The State Aid doesn't unduly affect the trade between Romania and the member states of the European Union.

3.3.1. The necessity of granting the State Aid

The investment program

3.3.1.1. The external loans contracted by SC Metrorex SA, the guarantees granted by the State for receiving of the external bank loans, the State participations with capital at SC Metrorex SA are used for financing the Bucharest Subway Modernization Project, stage I and II.

3.3.1.2. The entire railway network before 1989, consisting of 60 km double lines, 41 stations, 3 depots, and a repair factory, was equipped with material produced in Romania in a proportion of 95 %. Today it is not only out-dated, but it is also very old and dangerous to use. A similar situation is that of the railway, as the rail has only been replaced in proportion of 20 %.

3.3.1.3. In the same time, taking into account that:

- the average life cycle of the existing equipment is 20 years.
- the age of the existing park will lead to quashing 424 carriages in 2009 and another 78 in 2014.
- the modernization works will have high costs (they can cost more than 50% of the price of a new train, reducing the rentability of the investment).
- as a result of the modernization, the trains can be used for another 10 -15 years, and by that time the replaced equipments will not have gone over half of the life cycle;
- taking out of use more than half of the existing train park will reduce the exploitation costs;
- while approaching 2010 – 2014, when the existing trains reach the end of their life cycle, the company will seek new possibilities of acquiring new trains;
- the modernization of the equipment in use without taking into account the compatibility of the new trains with the old infrastructure is not beneficial;

resulted that it was necessary to invest in new equipment and in infrastructure.

3.3.1.4. The investment programme forecasts the improving of underground functioning and exploitation by rehabilitating and modernizing the fixed installations which are partly very old.

An important increase of work productivity, traffic safety and exploitation performances, as well as a reduction of the expenses are taken into account.

Organizational measures

3.3.1.5. Developing and modernizing the underground in Bucharest involves a series of organizational measures and of strengthening the management and the control at all the hierarchical levels responsible with the improvement of the quality and efficiency of the underground transport.

3.3.1.6. To increase the income resulted from exploitation by growth of service quality and the pleasure of travelling by underground, actions concerning reorganization and technological discipline are taken. The personnel, and especially those interacting with the passengers, are expected to have a new changed attitude regarding the quality of the transport, especially for the employees coming in direct contact with the passengers.

3.3.1.7. These measures consist of:

- updating the instructions for each level of activity (commercial change, technological installations, lines, tunnels and special constructions);
- reorganizing the underground traffic and adapting the traffic schedules to the new exploitation conditions for both the old and the new trains;
- closing some of the access ways after certain hours or during week-ends;
- a new price policy to change the option of passengers from the two journeys card to multi-journeys cards (10 journeys or monthly subscription), as well as producing a card that can be used for both the underground and terrestrial transport;
- harmonizing the policies regarding the passenger transport with the European Community, including increased prices to follow the economical growth and the level of living;
- reducing the number of kilometers for the probationary periods from 5000 to 2000 and making the trains operational earlier;
- outsourcing the services for maintaining the equipment in use;
- outsourcing other activities, mainly sanitation of the stations and the trains;
- contracting the electricity on the free market in order to reduce the costs;

- purchase materials and services through the Goods Exchange;

Institutional measures

3.3.1.8. The development, modernizing and making the underground efficient must be supported not only by organizational measures, but also by governmental decisions. One of the best institutional measures is aimed at coordinating the public transport in Bucharest and all the adjacent areas.

3.3.1.9. Making the underground transport become attractive to the passengers by means of the following:

- a) Traffic regularity and reducing the intervals between the trains to optimal values, 5 minutes during rush hours and 8 minutes for the others,
- b) modernizing the traffic control system and making it fit the new equipment in use on the existing lines and introducing a modernized system on the new lines;
- c) The ticket system and finding a common system for the underground and for the terrestrial transport on the existing lines and on the new ones;
- d) Safety in exploitation by modernizing the energetic and electromechanical installations on the existing lines and usage of modern and performant equipment on the new lines;
- e) The conditions of intervention in case of fire emergency, by modernizing the systems of fire detection and intervention in case of fire emergency, the systems of extinction and evacuation of smoke at the existing lines and introducing modern equipments at the new lines;
- f) Information of the passengers, orientation and directing them by introducing a new coherent information system, clear and easy to understand, both at the existing stations and at the new ones, a system that should be correlated and integrated with the information systems for the passengers used for the other means of public terrestrial transport;
- g) communication facilities between the passengers and the underground personnel, to increase public safety by introducing a modern system of surveillance for special areas, an intercom system for passengers-dispatcher communication at the stations, and passengers-conductor or train dispatcher in the underground trains;
- h) improving the microclimate in the stations and in the carriages by enhancing the ventilation, the air conditioning and sanitary systems on the existing lines, and by introducing improved equipment on the new lines;
- i) vertical transport facilities for the public, by maintaining the escalators in good conditions, installing new escalators and elevators for people with disabilities;

j) improving exploitation safety and comfort, by acquisition of new and modern rolling material, realised at the present standards existing in the European Community;

The effects and the benefits of the Project implementation

3.3.1.10. As a result of applying the measures settled in the strategy, investment, organizational and institutional measures, on medium and long term, important economical and financial effects derive. They conduct to increased efficiency of the underground transport and reduce the subvention for covering a part of the expenses from the state budget.

3.3.1.11. The effects should be:

- shortening the journeys, because of the increased speed in comparison with the terrestrial means of transport;
- shortening the journeys of the passengers who do not use the underground, but other means of transport (bus, tram, etc) or personal cars, due to reducing the traffic flow;
- reducing costs for road maintenance as a result of traffic flow reduction;
- increasing the efficiency of the public transport as a whole or by reorganising, with low investments, the terrestrial transport correlated with the mass means of transport - the underground;
- reducing pollution and, thus, the negative effects over people's health;
- saving time – because of the increase in economical speed and lack of traffic jams;
- road maintenance – low traffic is low costs for repairing the roads; a plus can be considered the fact that there are no traffic jams;
- reducing pollution – a diminished number of cars in traffic, because passengers are more interested in using the underground transport, which leads to a low pollution level (less carbon oxid, nitrogen oxid, sulphured hydrogen);
- increasing life standard in the area near an underground station, because of the development of new commercial, administrative and cultural poles.

The effects of the investment Project over the environment

3.3.1.12. The project does not have any negative effects over the environment.

Long term development assures life quality, within the limits of the ecosystem. It is thus very important that all the responsible factors to preserve the environment for present and future generations, as stipulated in the International Agreements Romania is being part at.

3.3.1.13. The impact over the new social and economical environment in Bucharest, produced by the modernization and development of the underground, can be seen in the advantages of this means of transport over all the social and environmental aspects of the life in the city. At the city level, the process of making the subway efficient as a result of the subway's development strategy manifests by the following:

- modernization of transport, increased comfort and safety for the passengers, as a result of investments in installations, new modern trains, etc.
- extending the underground network towards areas with fewer means of ground transport;
- reducing pollution and green house effect, as a result of reduced terrestrial traffic;
- reducing the noise produced by terrestrial means of transport;
- improving health condition of the population, due to the reduction of chemical and phonical pollution, car crashes, stress produced by finding a means of transport to and from work;
- creating parking lots due to reducing the number of personal cars in traffic, because passengers would preffer underground transport.

3.3.1.14. Every year, by governmental decisions, the sums representing the subventions/ transfers for exploitation in completion to its own incomes are approved in the Expenses and Incomes Budget of the SC Metrorex SA, **in order to maintain the budgetary balance.**

In the same time, other funds for reimburing the external credits guaranteed by the state budget, including interest payments and commissions are also approved.

By the law of the state budget, exemptions from the obligations deed to the state budget are approved, if the granted transfers (subsidies) don't cover the difference between the incomes and expenses.

The evolution of the budgetary subventions/transfers for supporting underground transport was influenced by the income obtained from passengers transport and by the expenses, taking into account that there was a price raise of fuel, electricity ant repairs in the 2003-2004 period.

3.3.1.15. The economical and the financial results of SC Metrorex SA, taking into account the data in the balance sheet for the last 3 years are the following :

	- thousand lei	- thousand lei	- thousand lei
Indicators	2001	2002	2003
The combined annual turnover	1.110.741.711	1.314.331.964	1.662.508.872
Profit/loss	0	- 179.408.797	0

3.3.1.16. Under these circumstances, the company cannot afford its own sources for making such major investments as those required by the Projects of Modernizing the Bucharest Subway, Ist and IInd stage. Given the large sums of money necessary, the subvention from the state budget were also insufficient and therefore the main source of finance for these investments is represented by external long-term credits, reimbursed from the state budget.

3.3.1.17. The contracted credits within the Project for modernizing the Bucharest Subway led to the acquisition of a low number of trains, taking into account the fact that most of the existing trains should no longer be functional due to their age.

The modernization and renewal of the equipment in use will reduce the expenses with fuel, maintenance and repairs, and they will also improve the underground transport quality.

Therefore, the State Aid for SC Metrorex SA, notified by the Ministry of Public Finance is necessary for operating the service of general economic interest under safety and comfort conditions.

3.3.2. The effect on the commerce between Romania and the Member States from the European Union

3.3.2.1. SC Metrorex SA carries out a service of general economic interest of underground passenger transport in Bucharest county. The relevant relevant geographical market affected by the granting of the support measure for SC Metrorex SA is represented by Bucharest county.

3.3.2.2. The proportion of the city transport operators in Bucharest county is the following:

- Autonomous Transport Regie Bucharest (auto) – 75%;
- SC T Metrorex SA (subway) – 20%;
- Other operators (auto) – 5%.

As the services offered by these operators are not interchangeable (the covered area, tariffs, service quality, waiting time, conditions in the stations, conditions in the transport vehicle, etc) the market of the product affected by the granting of the financial measure is represented by the market of public passengers transport with the subway.

3.3.2.1. As the notified State Aid does not constitute an overcompensation for carrying out the service of general economic interest, being necessary for carrying out, in safety and confort conditions, the conditions imposed at the entrustment of this service, the notified support measure doesn't unduly affect the commerce between Romania and the Member States of the European Union.

3.4. Therefore, the two conditions mentioned at point 3.3. are cumulatively met, conditions provisioned by the *Regulation regarding the state aid under the form of compensations granted to certain undertakings entrusted with the carrying out of services of general economic interest* in order to appreciate that the support measures for SC Metrorex SA, representing compensations for carrying out the service of general economic interest constitutes State Aid compatible with the normal competitive environment.

DECIDES

Art. 1. The financial support measure notified by the Ministry of Public Finance, to be granted to SC Metrorex SA constitutes 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 carrying out, under normal safety and confort conditions, of the service of general economic interest of public passenger transport by subway, 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 paragraph (1) letter. j) in the Law no. 143/1999, regarding State Aid, with all the subsequent modifications and completions, it is authorised the State Aid for *the Underground Transport Commercial Society „Metrorex” S.A.*, granted by the Governmental Ordinance no.31/1997, Law of Public Debt no.

81/1999, Governmental Ordinance no. 60/1999, Governmental Decision no. 909/2002, Governmental Decision no. 205/2000, Law no. 438/2001, Law of State Budget for 2004 no. 507/2003, Governmental Decision no.1103/2004 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 of 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 SC Metrorex SA, for its monitoring.

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

Art.6. According to the provisions of Article 29 of Law no. 143/1999, regarding the State Aid, the present decision can be contested by the interested persons in the Court of Law, Bucharest, the Administrative Contencious Section, within 30 days from its transmission.

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

- Ministry of Public Finances, Strada Apolodor nr. 17, sector 5, Bucuresti;
- SC Metrorex S.A, B-dul Dinicu Golescu nr.38, sector 1, Bucuresti.

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

PRESIDENT

MIHAI BERINDE