

**DECISION NO.91**

**of 11.03.2004**

**on the authorization of the State aid scheme contained by art. 22 of the Law on State Budget for 2004, having as beneficiaries undertakings under authority or coordinated by the Ministry of Economy and Commerce**

**THE PRESIDENT OF THE COMPETITION COUNCIL,**

**Based on:**

1. Decree no. 57/2004 regarding the appointment of the members of the Competition Council Plenum;
2. Provisions of Competition Law no. 21/1996, with subsequent amendments and completions, published in the Official Gazette, Part I, no. 88 of April 30, 1996;
3. The provisions of the Law no. 143/1999 on State aid, with subsequent completions, published in the Official Gazette, Part I, no. 370 of August 3, 1999;
4. Regulation regarding the organization, functioning and the procedure of the Competition Council, published in Official Gazette no. 50 bis, Part I, of March 25, 1997, with subsequent amendment;
5. Regulation regarding the form, the content and other details of the notification of a State aid, published in Official Gazette no. 125, Part I, of March 24, 2000;
6. The notification of the State Aid scheme having as beneficiaries undertakings under the authority or coordinated by the Ministry of Economy and Commerce, submitted by the Ministry of Economy and Commerce under Note no. 185424/26.01.2004, registered at the Competition Council as no. RS-AS 4/27.01.2004 that became effective on 27.02.2004;
7. The note of the Department for State Aid Authorization regarding the notified State aid.

**Based on the following reasons:**

1. The notified State aid consists in exemption granted to certain undertakings, under the authority or coordinated by the Ministry of Economy and Commerce, from payment of obligations owed to the State Budget, Single

National Fund for Social Health Insurance Budget, Unemployment Insurance Budget for 2004 financial exercise, including their elements, except the owed obligations from retaining at source. The mentioned exemptions are granted according to art. 22 of the Law no. 507/2003 on State Budget for 2004.

2. The subsidies granted through the State Budget Law and the budgets approved by the Government for these companies were lower than the subsidies needed by the undertakings and approved by the Ministry of Economy and Commerce, taking into account the international prices taken into consideration when establishing the surveyed prices and the inputs from material and rendered services costs, which are higher.

3. Art.4.2. of the Competition Law no. 21/1996, with subsequent amendments and completions, regulates the situation in economic fields or markets where the competition is excluded or substantially restricted by law or a certain monopoly position. In such cases (as the case in question), the Government may establish, through its decisions, appropriate forms for price control, for maximum 3 years, interval that can be extended successively for maximum 1 year, if the conditions that justified the respective decision continue to exist.

4. The prices of the products produced by the units mentioned by the present State aid scheme are regulated by G.D. no. 240/1997 regarding the settling of prices, tariffs, and the maximal added value for certain products and services regulated according to the Competition Law no. 21/1996, with subsequent amendments and completions, the settling of tax on crude oil and gas from the internal production and of the method for regulating the expenses necessary for achieving, developing and modernizing the production of the respective products, subsequent amended between 1997-2002, for diminishing the products list of this sector based on the more accentuated reduction of subsidies.

5. The purpose for granting the State aid as notified State aid scheme is to maintain in the economic circuit 11 companies under the authority or coordination of Ministry of Economy and Commerce, in order to continue the process of restructuring the mining sector, being one of the main objectives of the Mining Industry Strategy for 2003-2010, drawn up by the Romanian Government. This aid is meant to complete the transfers and subsidies granted to the mining sector units, according to art. 22 of the Law on State Budget for 2004, in order to balance the income and expenses budgets.

6. The future strategy of the mining industry provides the necessary conditions for the modernization and rehabilitation of the most efficient mines, in order to privatize them, as well as infrastructure works for new jobs creation and developing an environment favorable to the private sector.

7. The development of an attractive business environment and an adequate infrastructure will lead in time to a change of the balance between budgetary investment and private investment funds in favor of the latest one.

8. The future strategy of the mining industry has the following major goals:

a) approaching the mining activity on a commercial basis

- b) decreasing the direct involvement of the Government by gradually attracting private investments
- c) taking into account the environment protection when carrying on the mining activity
- d) diminishing the social issues generated by the closure of inefficient mines and revitalizing the economy in the affected areas

9. By reducing the direct involvement of the Government and gradually attracting the private investments it is had in view, among other things, the gradual reduction of the subsidies for the ore and lignite sector until they are completely eliminated in 2007. As for the subsidies in the pit sector, they will be granted as provided under CE Regulation no. 1407/23.07.2002 regarding the State Aid for coal industry.

10. Beneficiaries of the State aid scheme are undertakings under the authority or coordination of the Ministry of Economy and Commerce.

11. The 11 undertakings act on the following markets, which will not be affected by the granting of the notified State aid:

- coal market (CN a Huilei Petrosani, SC Banat Anina, CN a Lignitului Oltenia, SN a Carbunelui Ploiesti), companies ensuring all the internal coal production;
- non-ferrous minerals market (CN Minvest Deva, SC Moldomin Moldova Noua, CN Remin Baia Mare, SC Baita Stei, SC Cuprumin Abrud, SC Minbucovina Vatra Dornei), undertakings ensuring all the internal non-ferrous mineral production;
- uranium market – CN a Uraniului Bucuresti, the only internal producer of uranium.

12. For each beneficiary of the scheme, the total amount of State aid is divided as shown below:

- CN Lignit Oltenia	ROL 1,981.9 billion
- CN Remin	ROL 349.4 billion
- SC Minbucovina	ROL 62 billion
- CN Huila	ROL 1,379.9 billion
- CN Minvest	ROL 254.4 billion
- SC Baita	ROL 26.2 billion
- SC Moldomin	ROL 74.4 billion
- SN Carbunelui	ROL 288.5 billion
- CN Uraniului	ROL 178.7 billion
- SC Abrud	ROL 62.1 billion
- SCM Banat Anina	ROL 57.4 billion

13. The total estimated amount of the State aid to be granted to the beneficiaries (companies under the authority or coordination of the Ministry of Economy and Commerce) is ROL 4,715 billion, out of which ROL 55.8 billion represent the value of the increase and penalties for payment delay.

14. The data presented in the notification submitted to the Competition Council leads to the conclusion that the notified State aid scheme does not significantly distort the normal competitive environment as all the undertakings acting on the relevant market – coal, non-ferrous minerals and uranium - benefit from the provisions of the scheme. Also the scheme does not affect the application of the international agreements that Romania is part of.

15. Under art.13 (1) of the Law no. 143/1997 on State Aid, the Competition Council shall permanently survey all the existing aids, and if it is noticed that the notified State aid scheme affects the normal competitive environment and the proper application of the international agreements to which Romania is part, it shall request to the State aid grantor to take all the measures needed to eliminate its incompatibility with the State Aid Law.

### **DECIDES**

**Article 1.** Within the meaning of Article 12 par. 2 let. b) of the Law no. 143/1999 on State aid, the Competition Council authorizes the State aid scheme contained by art. 22 of the Law on State Budget for 2004, having as beneficiaries 11 undertakings subordinated to or coordinated by the Ministry of Economy and Commerce.

**Article 2.** The value of the State aid to be granted is ROL 4,715 billion.

**Article 3.** The present Decision becomes effective at the date of its communication.

**Article 4.** According to the provisions of Article 29 of the Law no. 143/1999 on State aid, the present Decision can be appealed within 30 days as of its communication before the Bucharest Court of Appeal.

**Article 5.** The present Decision shall be communicated by the Secretariat General of the Competition Council to:

- the Ministry of Economy and Commerce, 152 Calea Victoriei, sector 1, Bucharest

**Article 6.** The Secretariat General and the State Aid Directorate of the Competition Council shall pursue the fulfillment of the present Decision.

**PRESIDENT**

**MIHAI BERINDE**