

**To the: Bucharest Stock Exchange – Department of Operations Issuers Regulated Markets  
Financial Supervision Authority - General Directorate Supervision - Issuers Division**

Current report according to the provisions of Law 24/2017, ASF Regulation 5/2018 and the BVB Code

Date of the report: **June 3, 2019**

Name of Issuer Company: CNTEE TRANSELECTRICA SA, company managed under Two-tier System

Headquarters: Bucharest 1, Blvd. Magheru no. 33

Working location: Bucharest 3, Str. Olteni no. 2-4

Phone / fax numbers: 4021 3035 611 / 4021 3035 610

Single registration code: 13328043

LEI Code: 254900OLXCOUQC90M036

Number in the Commercial Register: J40/8060/2000

Share capital subscribed and paid: 733,031,420 Lei

Regulated market where the issued securities are transacted: Bucharest Stock Exchange

**Important event to report – SMART SA subsidiary share capital increase**

National Power Grid Company Transelectrica SA announces / informs the interested public that following Decision 13/08.05.2019 of the Shareholders' General Extraordinary Assembly, approving the participation of the Company in the share capital increase of the Company for Maintenance Services of the Electricity Transmission Grid Smart - SA, a subsidiary of the Company, with a cash contribution of up to 24,000,000 Lei,

by reference to the minutes of the Assembly's meeting, as requested by the Romanian State shareholder through the Ministry of Economy based on the position expressed by the Competition Council through address 4599/18.04.2019, attached to this document, namely regarding the Company's verification of the increase in view of the incidental State aid rules,

the Company's Directorate agreed to start the proceedings to implement the subsidiary's share capital increase with a test of the private economic operator (PEO), conducted, beforehand, by the subsidiary, and to start the necessary proceedings to delegate the subsidiary's Management Board to approve the increase of capital with a cash contribution of up to 24,000,000 Lei, as well as the fulfillment of all the measures prior to this operation.

**Marius – Dănuț CARAȘOL**

**Executive Director General  
Directorate Chairman**

**Constantin SARAGEA**

**Directorate Member**

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To the Director General CATALIN CONSTANTINESCU  
Company for Maintenance Services for the Electricity Transmission Network SMART SA  
Subsidiary of CNTEE TRANSELECTRICA SA  
Blvd. Gen. Gh. Magheru 33, Bucharest 1  
Postal code: RO-010325  
Phone: 004021 3054 402; fax: 004021 3054 470

Dear Director General,

Having analysed what you have transmitted in the fore-mentioned letter asking the Competition Council's opinion about the potential impact of state aid regulations in case the share capital of SMART SA<sup>1</sup> is increased we can inform you as follows:

In accordance with the content of the letter SMART SA was established by GD 710/2001 as subsidiary of CNTEE Transelectrica SA in order to provide maintenance into the electricity transmission grid managed by Transelectrica SA. The major shareholder (70.005%) of SMART SA is CNTEE Transelectrica SA<sup>2</sup>, while the minor one (29.994%) is the Ministry of Economy.

The letter also specifies that beginning with 2015 the company registered financial losses thus being deprived of necessary resources to pay outstanding debts and to make investments. Under such circumstances the major shareholder takes into account a capital infusion as cash, amounting to a total quantum of 24,000,000 Lei.

As regards the above we would like to provide the following issues:

*The Commission's Communication on state aid as mentioned in article 107 para (1) of the Treaty regarding the operation of the European Union*<sup>3</sup> (hereinafter called Communication) provides in item 3.2.1 that:

*"Public enterprises' resources represent also state resources in the sense of article 107 para (1) of the treaty because the state is able to control the utilisation of such resources. In the sense of the legislation regarding state aids, transfers within a public holding can also constitute state aid, for instance when resources are transferred from the parent company to its subsidiary [...]. The fact that a measure providing a benefit is not directly financed by the state but by a public or private organisation established or designated by the state to manage the aid does not necessarily mean such measure is not financed from state resources".*

Consequently in the sense of the above the capital increase of SMART SA made from the sources of CNTEE Transelectrica SA could be considered as financed from public funds. Under such circumstances since there is actual risk aids can be granted by means of state-owned enterprises in non-transparent manner while also breaching relevant specific regulations the *Communication* specifies one needs analysing the extent to which such operation is imputable to the state and implicitly whether public authorities can be considered as involved, in a way or another, in its application<sup>4</sup>. Thus in case the resource transfer from the public enterprise is made under decision taken for purely economic or profitability considerations without involving the state, the measure does not contain state aid items. In cases like this the beneficiary enterprise is considered to receive no benefit and the test of the cautious private investor in the market economy is fulfilled.

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<sup>1</sup> Company for Maintenance Services to the Electricity Transmission Network SMART SA

<sup>2</sup> In its turn CNTEE Transelectrica SA is held 58.688% by the Romanian State through the Ministry of Economy

<sup>3</sup> Published in the European Union's Official Journal OJ C no. 262/19.7.2016

<sup>4</sup> See para (39)-(40) of the Communication. Indicators on such imputable charge can be found in para (43) of the Communication.

In this respect according to European jurisprudence whenever the investment of a public organisation / enterprise has to be established whether it constitutes state aid one needs to assess whether in similar circumstances a private investor of comparable size operating under normal market economy conditions could have been determined to make the respective investment (the capital increase operation).

Such assessment requires an analysis / study performed by the involved entity with respect to the alternatives it disposes of regarding such capital infusion. In this case the study will look into scenarios such as company dissolution / liquidation and the net gains involved by implementing this measure, which will be compared with the ones implied by the further company activity, taking into account the capital increase.

The continued operation scenario should provide for a business plan that starts from an analysis of the current economic and financial situation and takes into account the company's growth prospects, considering the additional funds generated by the capital increase, so that the possible investment decision is a well-grounded one, which will ensure a reasonable profitability for the State. The extent to which the State will be able to recover the investment in an acceptable period of time will be assessed, either through the dividends it will obtain or by increasing the value of the company, taking into account the prospect of selling its stake in the company in question.

Consequently, the capital increase does not constitute State aid if the capital infusion provides for a higher level of earnings, since by choosing this alternative, the entity in question will act similarly to a prudent private investor and SMART SA will not obtain an economic advantage concretized by a potential State aid measure.<sup>5</sup>

If the above assessments are not carried out, or if it results from the analysis that the operation in question is not similar to one of a comparable private investor, we consider that the capital increase may represent State aid which, given the company's economic and financial situation, can only be granted in compliance with the relevant State aid provisions, in particular the *Commission Notice regarding Guidelines on State Aid for Rescuing and Restructuring Companies in difficulty*<sup>6</sup>. In particular, it provides for the following:

- including the company into the category 'Companies in difficulty';
- the existence of a company restructuring plan to ensure its long-term viability, preferably drawn up by an independent expert, given that this type of aid must be notified to the European Commission;
- the beneficiary's own contribution to the financing of the restructuring plan, which must be certain and unaffected by the aid and to cover at least 50% of the amount of the restructuring costs;
- applying certain measures to limit the competition distortions, so that the negative effects on the commercial conditions are reduced as much as possible and the positive effects will exceed the negative ones.

We remind you that, from a procedural point of view, the notification of such State aid will have to follow the steps stipulated in OUG 77/2014 regarding the national procedures in the State aid field, as well as for amending and completing Competition Law 21/1996<sup>7</sup>, with later amendments and additions.

Assuring you of our full collaboration, we are at your disposal for any further clarification.

Sincerely,

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<sup>5</sup> The only institution empowered to provide legal certainty regarding the *non-aid* character of a support measure and its compatibility is the European Commission.

<sup>6</sup> Published in the Official Journal of the European Union OJC/249/2014

<sup>7</sup> Published in the Official Gazette of Romania. Part I, no. 893/9.12.2014