

REGULATION ON STATE AID TO SHIPBUILDING

Under the art. 27 (1) of the Competition Law 21/1996, with subsequent modifications and completions, and under art. 30 (1) of Law 143/1999 on State Aid, with subsequent modifications and completions,

The Competition Council adopts this Regulation,

Introduction

The drafting of a legal framework to regulate the State aid matter in the shipbuilding industry stands for the continuous harmonization of the Romanian legislation with the European legislation, which part of Romania's process of accession to the EU.

The State aid control is exerted by the Competition Council in view of seeking the extent in which the state aid is compatible with a normal competition environment, in a market economy where prices and tariffs for services are regulated by supply and demand.

The objectives of this Regulation are, to the largest extent possible, to remove the differences between the rules applicable to the shipbuilding industry and to other industrial sectors and, thereby, to simplify and make more transparent the Competition Council policy in this area, by extending general horizontal provisions to the shipbuilding sector.

Certain specific factors affecting the shipbuilding sector should be reflected in the Competition Council policy of State aid control. These factors include:

- (a) over-capacity, depressed prices and trade distortions in the world shipbuilding market;
- (b) the special size and nature of ships which raises the potential of State-supported credit facilities to distort competition;
- (c) the fact that World Trade Organisation ("WTO") unfair trade disciplines are difficult to apply in the shipbuilding sector;
- (d) the existence of agreements within the Organisation for Economic Cooperation and Development ("OECD") in the shipbuilding sector, namely the OECD Arrangement on Guidelines for Officially Supported Export Credits with its Sector Understanding on Export Credits for Ships, which applies in the Community pursuant to Council Decision 2001/76/EC of 22 December 2000 replacing the Decision of 4 April 1978 on the application of certain guidelines in the field of officially supported export credits.

In the light of these special characteristics, the objectives of this Regulation, in addition to simplifying the applicable rules, are to:

- (a) encourage greater efficiency and competitiveness of shipyards, in particular through the promotion of innovation;
- (b) facilitate the reduction of non-viable capacity where necessary;
- (c) respect applicable international obligations in the field of export credits and development aid.

In order to achieve these objectives, this Regulation provides for specific measures in relation to aid for innovation, closure aid, export credits and development aid and regional aid.

This Regulation has as an objective to increase transparency in the process of assessment of the notification received by the Competition Council, and to set the relevant criteria and procedures.

Art. 1 Scope

(1) This Regulation applies to State aid schemes and individual aids granted in the shipbuilding sector;

(2) Aid to shipbuilding shall include aid to any shipyard, related entity, shipowner and third party which is granted, whether directly or indirectly, for building, repair or conversion of ships;

(3) Certain features make shipbuilding unique and distinguish it from other industries such as short production series, the size, value and complexity of the units produced as well as the fact that prototypes are generally used commercially. As a consequence, shipbuilding is the only sector eligible for innovation aid. It is considered that the unique characteristics of the shipbuilding industry justify maintaining a sector-specific innovation aid. Therefore, this Regulation aims at improving support to innovation;

(4) The Competition Council may only consider aid to shipbuilding, ship repair and ship conversion to be compatible with a normal competition environment if it complies with the provisions of this Regulation.

Art. 2 Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (a) "shipbuilding" means the building, of self-propelled seagoing commercial vessels;
- (b) "ship repair or reconditioning " means self-propelled seagoing commercial vessels;
- (c) "ship conversion" means the conversion of self-propelled seagoing commercial vessels of not less than 1000 gt, on condition that conversion operations entail radical alterations to the cargo plan, the shell, the propulsion system or the passenger accommodation;
- (d) "self-propelled seagoing commercial vessels" means:

(1) vessels of not less than 100 gt used for the transportation of passengers and/or goods,

(2) vessels of not less than 100 gt for the performance of a specialised service (for example, dredgers and ice breakers),

(3) tugs of not less than 365 kW,

(4) fishing vessels of not less than 100 gt, with regards to export credits and development aid if in compliance with the OECD Arrangement on Guidelines for Officially Supported Export Credits and with its Sector Understanding on Export Credits for Ships, or with any agreement amending or replacing either of them;

(5) unfinished shells of the vessels referred to in points (a) to (d) that are afloat and mobile;

(e) "self-propelled seagoing vessel" shall mean a vessel that, by means of its permanent

propulsion and steering, has all the characteristics of self-navigability on the high seas. Military vessels (i.e. vessels which according to their basic structural characteristics and capability are specifically intended to be used exclusively for military purposes, such as warships and other vessels for offensive or defensive action) and modifications made or features added to other vessels exclusively for military purposes shall be excluded, provided that any measures or practices applied in respect of such vessels, modifications or features are not disguised actions taken in favour of commercial shipbuilding inconsistent with State aid rules;

(f) "related entity" means any natural or legal person who:

(1) owns or controls an undertaking engaged in shipbuilding, ship repair or ship conversion, or

(2) is owned or controlled, directly or indirectly, whether through stock ownership or otherwise, by an undertaking engaged in shipbuilding, ship repair or ship conversion.

(g) Control shall be presumed to arise once a person or undertaking engaged in shipbuilding, ship repair or ship conversion owns or controls an interest of more than 25 % in the other or vice versa.

(h) "aid" means aid within the meaning of the Law on State aid no. 143/1999 with subsequent modifications and completions, "any measure of support from the State or from the local administrative authorities, or from the resources of the State or of the local administrative authorities, regardless of its form, that distorts or threatens to distort competition, through favouring certain undertakings, the production of certain goods or the provision of certain services or affects the trade between Romania and the Member States of the European Union is considered incompatible with a normal competition environment", including measures such as credit and guarantees facilities and fiscal facilities.

Art. 3 Application of State aid horizontal Provisions

The general principle is that aid to shipbuilding may be granted in accordance with Law on State aid no. 143/1999 with subsequent modifications and completions, and the relevant regulations , including the following provisions:

(a) Regulation on state aid regarding training of employees, enacted by Order of the president of the Competition Council no. 92/2002 published in the Official Gazette of Romania no. 470/2 July 2002;

(b) Regulation on the state aid de minimis threshold not subject to the notification obligation, enacted by Order of the president of the Competition Council no 27/2000, published in the Official Gazette of Romania no. 125/24 March 2000;

(c) Regulation on state aid regarding small and medium-size enterprises enacted by Order of the president of the Competition Council no. 55/23 March 2004, published in the Official Gazette of Romania no. 340/19 April 2004;

(d) Regulation on regional state aid enacted by Order of the president of the Competition Council no. 55/23 March 2004.

(e) Regulation on state aid regarding rescue and restructuring firms in difficulty enacted by Order of the president of the Competition Council no. 92/2002, published in the Official Gazette of Romania no. 470/2 July 2002;

(f) Regulation on state aid regarding environment protection enacted by Order of the president of the Competition Council no. 92/2002, published in the Official Gazette of Romania no. 470/2 July 2002;

(g) Regulation on state aid on research and development enacted by Order of the president of the Competition Council no. 92/2002, published in the Official Gazette of Romania no. 470/2 July 2002.

Art. 4 Specific Provisions

The general principle outlined in Art. 5 is subject to the exceptions under Art. 7, which are justified by the specific factors presented in Art. 11.

Art. 5 Aid to research, development and innovation

(1) Aid granted to defray expenditure by shipbuilding, ship repair or ship conversion undertakings on research and development projects may be considered compatible with the common market if it is in compliance with the rules laid down in the Regulation for State aid for research and development, or any successor arrangement.

(2) Aid granted for innovation in existing shipbuilding, ship repair or ship conversion yards may be deemed compatible with the common market up to a maximum aid intensity of 20 % gross, provided that:

(a) it relates to the industrial application of innovative products and processes, e.g. technologically new or substantially improved products and processes compared to the state of the art existing in this industry in the European Union, which carry a risk of technological or industrial failure;

(b) the aid is limited to supporting expenditure on investments, design, engineering and testing activities directly and exclusively related to the innovative part of the project. Exceptionally, additional production costs that are strictly necessary to validate the technological innovation can be eligible to the extent they are limited to the minimum necessary amount.

Art. 6 Closure aid

(1) Aid to defray the normal costs resulting from the total or partial closure of shipbuilding, ship repair or ship conversion yards may be considered compatible with the common market provided that the resulting capacity reduction is of a genuine and irreversible nature.

(2) The costs eligible for the aid referred to in paragraph 1 are:

(a) payments to workers made redundant or retired before legal retirement age;

(b) the costs of counselling services to workers made or to be made redundant or retired before legal retirement age, including payments made by shipyards to facilitate the creation of small enterprises which are independent of the shipyards in question and whose activities are not principally shipbuilding;

(c) payments to workers for vocational retraining;

(d) expenditure incurred for the redevelopment of the yard(s), its buildings, installations and infrastructure for use other than shipbuilding.

(2) In the case of undertakings which totally cease shipbuilding, ship repair and ship conversion, the following measures may also be deemed compatible with the common market:

(3) (a) aid of an amount not exceeding the higher of the following two values, as determined by an independent consultant's report: the residual book value of the installations, or the discounted operational profits obtainable over a projected three-year period, less any advantages the aided undertaking derives from the closure of the installations;

(b) aid such as loans or loan guarantees for working capital needed to enable the undertaking to complete unfinished works provided that this is kept to the minimum necessary and a significant proportion of the work has already been done.

(4) Undertakings receiving partial closure aid must not have benefited from rescue or restructuring aid in the past 10 years. Where less than 10 years have elapsed since the rescue or restructuring aid was granted, the Competition Council will allow partial closure aid only in exceptional and unforeseeable circumstances for which the company is not responsible.

(5) The amount and intensity of aid must be justified by the extent of the closures involved, account being taken of the structural problems of the region concerned and, in the case of conversion to other industrial activities, of the national legislation and rules applicable to those new activities.

(6) In order to establish the irreversible nature of aided closures, the Competition Council concerned shall ensure that the closed shipbuilding facilities remain closed for a period of not less than 10 years.

Art. 7 Employment aid

Aid granted for the creation of employment as well as for the recruitment of disadvantaged and disabled workers or to cover the additional costs of employing disadvantaged and disabled workers in shipbuilding, ship repair or ship conversion undertakings may be considered compatible with a normal competition market if it is in compliance with the substantive rules laid down in the Regulation on State aid for employment.

Art. 8 Export credits

Aid to shipbuilding in the form of State-supported credit facilities granted to national and non-national shipowners or third parties for the building or conversion of vessels may be deemed compatible with the common market if it complies with the terms of the OECD Arrangement on Guidelines for Officially Supported Export Credits and with its Sector Understanding on Export Credits for Ships.

Art. 9 Development aid

(1) Aid related to shipbuilding and ship conversion granted as development assistance to a developing country may be deemed compatible with the common market if it complies with the terms laid down for that purpose by the OECD Arrangement on Guidelines for Officially Supported Export Credits and its Sector Understanding on Export Credits or any successive

terms laid down in such an arrangement or replacing the Arrangement or any successive terms laid down in such an arrangement or replacing the Arrangement.

(2) The Competition Council will verify the particular development content of the proposed aid, if the aid is necessary and that it falls within the scope of the OECD Arrangement on Guidelines for Officially Supported Export Credits and its Sector Understanding on Export Credits for Ships or any successive terms laid down in such an arrangement or replacing the Arrangement. The offer of development assistance must be open to bids from different yards. To the extent that Community public procurement rules are applicable, bidding procedures have to comply with them.

Art.10 Regional aid

Regional aid to shipbuilding, ship repair or ship conversion may be deemed compatible with the common market only if it fulfils the following conditions:

- (a) the aid must be granted for investment in upgrading or modernising existing yards, not linked to a financial restructuring of the yard(s) concerned, with the objective of improving the productivity of existing installations;
- (b) intensity of the aid must not exceed 22,5 %;
- (c) the aid must be limited to support eligible expenditure as defined in the applicable Regulations on regional aid.

Art. 11 Notification obligation

All plans to grant new aid to shipbuilding, ship repair or ship conversion, either in the form of a scheme or as individual aid not covered by a scheme, shall be notified to the Competition Council.

Art. 12 Monitoring

Suppliers and initiators of state aids for the shipbuilding industry shall submit to the Competition Council annual reports on all existing aid schemes pursuant to the rules set forth in Law 143/1999 with subsequent modifications and completions and in its implementing provisions.

Art. 13 Cumulation rule

- (1) The aid ceilings stipulated in this Regulation are applicable irrespective of whether the aid in question is financed wholly or in part from State resources or from European Community resources.
- (2) Aid authorised under this Regulation may not be combined with other forms of State aid or with other forms of European Union financing, the cumulation of which produces an aid intensity higher than that laid down in these guidelines.
- (3) In the case of aid serving different purposes and involving the same eligible costs, the most favourable aid ceiling will apply.

Art. 14 Final provisions

(1) This Regulation shall be enacted by Order of the president of the Competition Council and shall be published in the Official Gazette of Romania.

(2) This Regulation transposes into the Romanian legislation the legal Framework of the European Commission regarding the state aid for the shipbuilding industry, as published in the Official Journal of the European Union 317/30.12.2003.