

GUIDELINES ON STATE AID TO MARITIME TRANSPORT

Pursuant to Article 28(1) of Competition Law and to Article 22 (1) of the State Aid Law no. 143/1999, the Competition Council adopts the present guidelines:

1. Introduction

1.1 Drafting a legal framework regulating the state aid discipline stands for the continuation of the harmonizing process of the Romanian legislation with the European legislation, which is part of Romania's accession process to the European Union.

1.2. The purpose of the state aid control exerted by the public authorities or any other bodies administering resources on behalf of the state aims at assessing the compatibility of a state aid with a normal competitive environment within a market economy where the supply and demand determine the prices of the goods and services.

1.3. The State aid granted in favor of maritime transport may be justify primarily by the necessity of maintenance the safety standards and the working conditions on vessels registered in Romania, as per international conventions and resolutions of international Organizations at which Romania is part/member, in particular the International Maritime Organization, by the necessity of modernization and renewal of Romanian maritime fleet as well as the meeting of the provisions regarding environmental protection, in the purpose of ensuring freedom of access to shipping markets across the world for safe and environmentally friendly ships.

2. Application field

2.1. These instructions apply to state aid schemes and individual state aids granted to maritime transport.

2.2. These guidelines do not cover aid to shipbuilding and aid for fishing vessels.

2.3. Investments in infrastructure are not normally considered to involve State aid within the meaning of Article 2 of the Law no. 143/1999, if it is provided free and equal access to the infrastructure for the benefit of all interested operators. However, the Competition Council may examine such investments if they could directly or indirectly benefit particular ship-owners.

2.4. Support measures, any financial advantage conferred in any form whatsoever funded by state resources granted by public authorities or by other bodies administering resources on behalf of the state do not represent state aid in the case when the principle "private prudent investor in the market economy" can be applicable..

3. Definitions

3.1. Within these instructions the following terms and expressions mean:

a) shipping company – commercial company, come into being as Romanian corporate body, which have as main objective the goods(bale) and/or person maritime transport and which has its own maritime ships or chartered vessels as bareboat for a least a year.

- b) vessel – is defined according to GO no.42/1997, with further modifications and replenishments, on naval transport, approved with modifications and replenishments through the Law no.412/2002 and comply cumulative the following conditions: is designed for maritime transport (for goods and/or person) and have the right to flag under Romanian colors .
- c) Seafarer – sea-going and auxiliary personnel which forms the shipping crew established depend on the type and the destination of the vessel.
- d) public service obligation – any obligation imposed to a any obligation imposed upon a carrier to ensure the provision of a service satisfying fixed standards of continuity, regularity, capacity and pricing, which standards the carrier would not assume if it were solely considering its economic interest.
- e) Tonnage tax - the ship-owner pays an amount of tax linked directly to the net tonnage operated.

4. The scope and the general objectives of state aid in maritime transport

- 4.1 State aid granted in maritime transport should not distort significantly the competition and should not come over the proper application of the international agreements at which Romania is part.
- 4.2. State aid must always be restricted to what is necessary to achieve its purpose and be granted in a transparent manner.
- 4.3. The cumulative effect of all aids granted by State authorities (including national, regional and local levels) must always be taken into account.
- 4.4. Should be granted state aids in the maritime transport having as objectives:
 - a) The maintenance of the vessel under Romanian flag;
 - b) Stately training of employment (both on board and on shore);
 - c) Enhancing the competitiveness, preserve maritime know-how and develop maritime skills;
 - d) Improving the safeguard;
 - e) Improving the quality as to the technical standards and to the vessel operation

5. Operating aid

- 5.1. Direct aids aiming at covering operating losses should be exceptional, temporary and digressive.
- 5.2. In exceptional cases, this type of aid may be granted if there are fulfilled all the following conditions:
 - a) the aid should be justify through its contribution at the rectification, renewal and development of the Romanian commercial fleet.
 - b) Its level is proportional to the handicaps it seeks to alleviate.

6. Fiscal and social measures to improve competitiveness

- 6.1. There may be authorizing state aids in maritime transport for the shipping companies consisting of:
 - a) a tax free basis on profits made on the sale of ships for a limited number of years, provided that these profits are reinvested in getting the new ships;

b) accelerated depreciation on investment in new ships which are part of the companies patrimony ;

c) The replacing of the normal taxation system applied to the company with a net tonnage operated tax which it will be payable irrespective of the company's actual earnings, or profits or losses made;

d) Other fiscal facilities.

6.2. The shipping companies, to beneficiate by state aid consisting in social and fiscal facilities, should fulfill the following criteria:

a) To prove that the strategic and commercial management is made in Romania, beneficiaries must be liable to corporate tax in Romania;

b) All vessels operated by companies benefiting from these measures comply with the relevant international and Community safety standards, including those relating to onboard working conditions.

6.3. Competition Council will require the provision of regular reports, demonstrating the effect of the measure on the Romanian registered fleet operated from the Member State and on employment of seafarers.

6.4. The fiscal advantages mentioned above must be restricted to shipping activities; hence, in cases where a ship owning company is also engaged in other commercial activities, transparent accounting would be required in order to prevent spill over to no shipping related activities.

7. State aides regarding labor costs

7.1. There can be authorized the state aides for marine transport for the navigation companies, consisting in:

a) Measures for reduction of the costs linked to labor.

b) Supporting measures to directly stimulate the development of the maritime area and the employment of personnel;

c) Reduction to zero of the liabilities, that would allow the maritime companies to bring the employment cists at a level according to the world provisions which, often, impose the remission from the tax payment obligation and from the social security of the navigators

7.2. The intercession consisting in partial or total repayment of the costs resulted from the contributions on salaries, to the marine company, generally is being considered as the equivalent of a low taxation system, providing that it is linked to the provisioned taxes, without any over-compensation component. This system should be transparent and not to be opened to abuses.

7.3. There can not be authorized the state aids in the form of subsidies for the net salaries of the navigators, as they lead to a distortion of the competition.

8. State aids for investments

8.1. The state aid for investment can be allowed with the meeting of the safety rules on sea. Aid for investment can be allowed with the meeting of the safety rules on sea, in certain conditions, for improving the equipments from the board of the vessels registered in Romania or for the promoting of utilizing safe vessels. There can be granted state aids according to the provisions from art. 2 (6) in Law no. 143/1999 regarding the state aid, aids

which have as finality the modernization of the vessels registered in Romania, and so being reached superior standards of safety and environmental protection laid down within the international conventions and which anticipate higher standards, enhancing this way the safety and environmental control.

8.2. When the investments are being linked of the shipbuilding, the granted state aid must be accordingly to the provisions specific for the state aid for shipbuilding.

8.3. Regional aid for maritime companies, which can take the form of investment aid, can be allowed providing that the region would benefit from it, after a reasonable period of time. It maybe the case of the investments linked to the establishing of a storehouse or to the acquisition of a immobile equipment at he board of the vessel.

8.4. The investment state aid granted to maritime companies can be allowed only if the rules regarding regional state aid are being met...

9. Regional aid granted to the marine transportation

9.1. For the regional state aid schemes for marine transport there are applicable the provisions regarding the regional state aid.

10. State aid for training

10.1. Many training programs followed by the navigators and financed by the State are considered to be state aids due to their general nature (more professional than academic). Hence, these do not make the subject of the notification and analyzing by the Competition Council.

10.2. Where training state aids are granted, their notification is a must if their value is higher than the minimum ceiling set by the Law no. 143/1999 regarding the state aid, ceiling that can be modified by an Order of the Competition Council President.

10.3. State aid for training shall be authorized providing that it would meet the general granting criteria (for ex. Proportionality, non-discrimination, transparency, - as to the training on the board of the vessels registered in Romania.

10.4. In exceptional situations, the state aid for training on the board of other vessels can be authorized when it is justified by objective criteria, such as the lack of free places on the vessels written down in the Romanian's State Registers.

10.5. When there are granted state aids for training on board, the trainee can not be, in principle, a working member of the crew, but the crew must be over-numbered. This is for the ensuring that the subsidies for the net wages won't be paid for the navigators involved in regular crews 'activities..

10.6. In order to ensure and develop the maritime specializing and the competitiveness of the maritime industry necessary to the large scale research and developing efforts concentrated on quality, productivity, safety and environmental protection. For all these activities, the support of the State can be authorized through regulations regarding the state aid for research-development and for environmental protection.

11. State aid for restructuring, including for privatization

11.1. The Competition Council shall apply the Guidelines regarding rescuing and restructuring of the enterprises in difficulty if rescuing aid is being granted towards maritime companies.

12. The obligations and contracts of the public service

12.1. The obligations of the public service can be imposed within the services programmed in those harbors which serve the Romania marginal regions or the routes seldom served , considered as vital for the economic developing of those region , if the operators from the market won't ensure a sufficient level of the services.

12.2. State intervention for covering the operational losses due to the carrying on of the public service obligations is not considered as state aid. In consequence, the notification towards the Competition Council is not necessary if there are being meet the following conditions:

a) the Public service contracts do not break the applying of the international treaties to which Romania is being part and do not include state aid elements ; the public service obligation is being given by organizing a public auction , the implementing of public service contracts being transparent and allowing the development of competition ;

b) to make adequate publicity for the public auctions (respecting the legal requirements regarding the level and the frequency of the job, the capacity, prices, required standards, s.o.) those shall be clearly and transparently specified in order to ensure to all the transporters having access right to the rout equal chances to bid ;

c) The State can give a contract to the winning bidder who asks for the lowest financial compensation and it can repay him the supplementary costs beared by the operator as a result of supplying the service, excepting the exceptional and entirely justified cases. These costs should be directly linked to the calculated loss, realized by the operator as incurrence from the ensured services. it must be kept a separate accounting for each service so that it can be verified the non-existence of the over-compensations or of the crossed subsidies and for the system not to be used for supporting an inefficient management or inefficient operating methods.

12.3. The duration in time of the public service must be limited to aprox. 5 years because the contracts carried out on a significantly longer period, can lead to the creation of a monopole..

12.4. The exceptions from the mentioned procedure can be justified and shall be notified and assessed by the Competition Council according to the general regulations regarding the state aid. In assessing the compatibility the Competition Council shall analyze if the aid can detour a significant volume of the traffic or if it implies over-compensation, situation which would allow the selected operator to beneficiate from a cross-subsidy of activities for which there are other operators, too..

13. The state aid's margins

13.1. A total reduction of the taxes and social expenses for the navigators and of the contributions imposed to the company for the navigating activity, represents the maximum admitted level of the state aid.

14.Final dispositions

14.1. The provisions of the present Guidelines do not come in contradiction with the other regulations issued when applying the Law 143/1999.

14.2. The present Guidelines are applicable to the state aids granted to the marine transport, notified after the coming into force of these provisions, as well as for the situation when the state aids were notified before their coming into force but the decision of the Competition Council is subsequent to this data or when the Competition Council did not issued any decision yet.

14.3. According with the provisions of the art..29 align. (1) in Law no. 21/1996 and of the art. 2 alin. (5) in Law no. 143/1999 the present Guidelines shall be implemented by a Competition Council President's Order.