

GUIDELINES

regarding the sales of lands and/or buildings by public authorities

Under the provisions of Article 28, paragraph (1) of Competition Law no. 21/1996 and of Article 22, paragraph (1) of Law no. 143/1999 on State Aid, with subsequent amendments, The Competition Council adopts the present guidelines.

CHAPTER I

1. Overall provisions

1.1. The present guidelines shall apply to sales of lands and/or buildings to undertakings by public authorities. The term *public authority* includes all the governmental agencies, central or local public administrations and other public organizations.

1.2. The present instructions are applied to sales of lands and/or buildings from the private property of the State, county, city or town and are not applicable to cases in which the public authorities rent or lease lands and/or buildings.

CHAPTER II

2. Principles

2.1. Sale through an unconditional bidding procedure

2.1.1. A sale of lands and/or buildings within an open and unconditional bidding procedure, which was publicized and which is comparable to a public sale, accepting the best or only bid is made by definition at market value and consequently does not contain State aid.

2.1.2. The fact that a different valuation of the land and/or buildings existed prior to the unconditional bidding procedure, e.g. for accounting purposes or to provide a proposed initial minimum bid, is irrelevant.

2.1.3. An offer is publicized when it is repeatedly advertised over a reasonably long period (two months or more) in the national press, estate gazettes or other appropriate publications and through real-estate agents addressing a broad range of potential buyers.

2.1.4. The sale offer of lands and/or buildings, which in view of their high value or other features may attract investors operating on a Europe-wide or international scale, should be announced in publications which have a regular international circulation. Such offer should also be made known through agents addressing clients on a Europe-wide or international scale.

2.1.5. An offer is *unconditional* when a buyer is generally free to acquire the land and/or building and to use these for his own purposes. Restrictions may be imposed in order to prevent the affection of a general public interest, for respecting the norms of environmental protection or to avoid purely speculative bids. Urban and regional planning restrictions imposed on the owner pursuant to domestic law on the use of the lands and/or buildings do not affect the unconditional nature of an offer.

2.1.6. If it is a condition of the sale that the future owner is to assume special obligations (other than those arising from general domestic law or decision of the public authorities or those relating to the general protection and conservation of the environment and to public health) for the benefit of the public authorities or in the general public interest, the offer is to be regarded as 'unconditional' within the meaning of the definition of the paragraph 2.1.5. only if all potential buyers would have to and be able to meet that obligation, irrespective of whether or not they run a business or of the nature of their business.

2. 2. Sale through other procedure than an unconditional bidding procedure. Independent expert evaluation

2.2.1. If public authorities intend not to use the procedure described under 2.1., an independent evaluation should be carried out by one or more independent asset valuers prior to the sale negotiations in order to establish the market value on the basis of generally accepted market indicators and valuation standards. Thus, the market price established is the minimum purchase price that can be agreed without granting State aid.

2.2.2. An *asset valuer* is a person of good repute who:

- a) has obtained an appropriate degree at a recognized centre of learning or an equivalent academic qualification;
- b) has suitable experience and competence in valuing lands and/or buildings in the location and of the category of the respective assets.

If there are not appropriate established academic qualifications, the asset valuer should be a member of a recognized professional body concerned with the valuation of land and buildings and either:

- a) be appointed by the courts or an authority of equivalent status, or
- b) have as a minimum a recognized certificate of specialized education and sufficient level of training with at least three years post-qualification practical experience in valuing land and/or buildings.

2.2.3. The valuer should be independent in the carrying out of his tasks, i.e. public authorities should not be entitled to issue orders as regards the result of the valuation. State valuation offices and public officers or employees are to be regarded as independent provided that undue influence on their findings is effectively excluded.

2.2.4. *Market value* means the price at which land and/or building could be sold under private contract between a free willing seller and an independent buyer on the date of valuation, it being assumed that the property was the object of a public offer, that market conditions permit a sell in normal conditions and that the available period for the sell negotiation is normal, having regard to the nature of the property.

2.3. Enforcing the margin of 5%

2.3.1. If, after a reasonable effort to sell the land and/or building at the market value, it is proved that the value set by the valuer cannot be obtained, the price of lands and/or buildings can be diminished with 5 % from that value, diminution that can be considered justified by the market conditions. If, after a reasonable period, it is proved that the lands and/or buildings concerned cannot be sold at the value set by the valuer less this 5 % margin, a new valuation may be carried out, and for this is to take account of the experience prior gained by the valuer and of the offers received until that date.

2.4. Special obligations

2.4.1. The sale of land and/or buildings may be attached to the public interest, with special obligations related to the lands and/or buildings involved, and not to the purchaser or his economic activities under the condition that every potential buyer is required, and in principle is able to fulfill them, irrespective of whether or not he runs a business or of the nature of his business.

2.4.2. The economic disadvantages of such obligations should be evaluated separately by independent valuers and may be set off against the purchase price. Obligations whose fulfillment would at least partly be in the buyer's own interest should be evaluated with that fact in mind: there may, for example, be an advantage in terms of advertising, sport or arts sponsorship, image, improvement of the buyer's own environment, or recreational facilities for the buyer's own staff.

2.4.3. The economic burden related to obligations incumbent on all landowners under the ordinary law are not to be discounted from the purchase price. Such burdens could be: care and maintenance of the land and/or buildings or the payment of taxes and similar charges.

2.5. Cost to the authorities

2.5.1. The primary costs to the public authorities of acquiring land and/or buildings are an indicator for the market value unless a significant period of time elapsed between the purchase and the sale of the land and/or building involved.

2.5.2. In principle, the market value should not be set below primary costs during a period of at least three years after acquisition of land and/or building unless the independent valuer specifically identified a general decline in market prices for land and/or buildings in the relevant market.

CHAPTER III

3. Notification

3.1. In order to be established the existence of a state aid and the way this affects the international agreements at which Romania is a party, the state aid providers should consequently notify to the Competition Council the following transactions:
(a) any sale that was not concluded on the basis of an open and unconditional bidding procedure, including/accepting the sale to the best or only bidder;
(b) any sale that was, in the absence of such procedure, conducted at less than market value as established by independent valuers.

4. Complaints

When the Competition Council receives a complaint or other submission from a third party alleging that there was a State aid element in an agreement for the sale of land and/or buildings by public authorities, it will assume that no State aid is involved if, following the analysis of the information supplied by the State aid providers concerned, it ascertains that the principles of Chapter II were observed.

CHAPTER V

5. Conditions for enforcing the present guidelines

5.1. The provisions of the present guidelines shall apply according to the Regulation regarding the form, content and other details of the state aid notification and to the Regulation regarding the de minimis threshold of the state aid that does not fall under the notification obligation, enforced through Order of the President of the Competition Council no. 27/2000.

6. State aid that does not fall under the provisions of the present guidelines

6.1. The present guidelines are applicable to state aids granted for land and building sale by public authorities, notified after the entering into force of this guidelines, as well as when the state aids were notified before the their entering into force, but the decision of the Competition Council is subsequently to this date or the Competition Council did not issued a decision yet.

7. The enforcement

7.1. The present guidelines are adopted through Order of the President of the Competition Council and enter in force at the publishing date in the Official Gazette of Romania, Part I.