



**R O M A N I A**

**CONSILIUL CONCURENTEI**

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**DECISION No. 151/14.05.2004**

**of the Competition Council regarding the prohibition of the State Aid notified by the Ministry of Public Finances for S.C. FOSERCO S.A. Tg. Ocna as part of the existing state aid scheme contained in the OUG no. 40/2002 for recovering the budgetary arrears, approved with amendments and completions through the Law nr. 491/2002 with subsequent amendments and completions**

**The President of the Competition Council,**

**On the basis of:**

- 1.** Decree no. 57/2004 for appointing the Competition Council's members;
- 2.** The provisions of the Competition Law no. 21/1996, published in the Official Journal no. 88, Part I, of 30.04.1996, with subsequent amendments and completions;
- 3.** The provisions of the Law no. 143/1999 on state aid, published in the Official Journal no. 370, Part I, of 03.08.1999, with subsequent amendments and completions;
- 4.** The Regulation regarding the organization, functioning and procedure of the Competition Council, published in the Official Journal no. 288, Part I of 01.04.2004;
- 5.** The state aid notification for S.C. FOSERCO S.A., submitted by the Ministry of Public Finances through the letter no. P/107673/22.02.2004, registered at the Competition Council with no. RS-AS 29/23.03.2004 that became effective at the registration date.

**On the grounds of the following reasons:**

1. S.C. Forseco S.A. Tg. Ocna was established in 1991 by re-organizing the activity of the Autonomous Regie Petrom S.A., as a state ownership company. Starting with 1999, it became a private enterprise, being taken over by R.P.T. OIL HOLDING S.A. CONSTANTA. At present, the enterprise has a social capital of 26,804,025,000 ROL.

2. Its main activity object consists in drilling the geological research wells, exploitation and injections for crude oil and gas, thermal and mineralised waters and for other useful substances, wells overhaul, withdrawal of casing, installation works, repairing, recovering and reconditioning the drilling liquid.

3. The notified state aid represents a specific allocation within an existing state aid scheme, contained by GEO no. 40/2002 for recovering the budgetary arrears.

4. The value of the notified state aid is of 74,057,854,998 ROL and represents exemption for the payment of interests and delay penalties afferent to obligations owed to the consolidated State budget which is calculated until 08.04.2002 for debts delayed at 31.12.2001.

5. S.C. Foserco S.A. benefited of a state aid in quantum of 48,831,386,750 ROL, representing the exemption for the payment of interests and delay penalties afferent to budgetary obligations, on the basis of GEO no. 40/2002, according to the Convention no. 364/2003, concluded between the Ministry of Public Finances and S.C. Foserco S.A..

6. The objective of the notified state aid is the restructuring of S.C. Foserco S.A. Tg. Ocna.

7. The relevant product market is the market of oil drilling services and of related activities. The geographic area on which the company provides its services is represented by the following counties: Bacau, Neamt, Ialomita and Ilfov (agricultural county).

The main competitors of the state aid beneficiary are: S.C. Hidraulic S.R.L. Moinesti, S.C. Foraj S.A. Targu Mures, S.C. Dafora S.A. Medias, S.C. Foradex S.A. Bucuresti.

The share market of S.C. Foserco S.A. Tg. Ocna for drilling activity is of 20%.

8. The analysis of the notified measure was carried out in accordance with the criteria for granting state aids provided in the *Regulation on state aid for rescuing and restructuring firms in difficulty*. S.C. Foserco S.A. Tg. Ocna is a firm in difficulty, having problems that negatively influenced its economic-financial activity.

This firm is in difficulty due to the following reasons: it is registering losses, its turnover is descending, the stocks have an upward trend, the total debts are rising, the regulatory capital is going down, the fixed assets have an important weight in total assets.

Thus, the financial results registered by the company in the last 3 years are representative:

	thousands ROL		
	2001	2002	2003
<b>Turnover</b>	75,676,990	141,515,414	124,144,883
<b>Profit/loss</b>	- 24,735,610	-29,647,324	-72,661,180

The analysis in dynamic of the main economic-financial indicators from 2001-2003 points out that:

- the rate of general liability is unfavourable, which denotes the risk for the company of not being able to pay its short-time debts;
- the rate of immediate liability shows that the company has not enough liabilities for a total covering of all its current debts;
- the rates of financial security and of financial patrimonial solvability register negative figures, which is generated by the successively accumulated losses that diminished the regulatory capital;
- the rate of profitability is registering negative values showing that due to the lack of restructuring process, at the end of 2003, the company was not able to cover high existing exploitation costs from sales.

9. S.C. Forseco S.A. Tg. Ocna is part of R.P.T. OIL HOLDING S.A. CONSTANTA. According to the provisions of art. 2 para. (5) of the *Regulation on state aid for rescue and restructuring firms in difficulty*, a company owned by a holding is not normally eligible for granting rescue and restructuring aid, unless there can be demonstrated that the company's difficulties are not its own and these are not a result of an arbitrary cost allocation within the holding and the difficulties are much too serious to be solved by the holding. Based on the analysis of the information contained by the notification form sent by the grantor, this could not be demonstrated.

10. The company will implement during 2004-2009 a restructuring plan, which contains organizational and management measures as well as technical, technological and financial measures, as follows:

MEASURE	TERM	COSTS (mil. ROL)	OWN SOURCE S (mil. ROL)	STATE AID (mil. ROL)	EFFECTS	
					Diminishing the costs (mil. ROL)	Growing the incomes (mil. ROL)
<b>I. Organizational measures</b>		<b>6880</b>	<b>6880</b>	<b>-</b>	<b>33990</b>	<b>116341</b>
1. Reducing transport expenses	Quarter II 2004	1500	1500	-	3000	-
2. Production Works for itself	Quarter II 2004	500	500	-	-	4940
3. Fixed assets leasing	Quarter IV 2004	40	40	-	14230	32358
4. Activity organised on profit centres	Quarter I 2005	-	-	-	-	4940
5. Providing external services	Quarter II 2005	2000	2000	-	-	74103
6. Merging some production units for reducing the costs	Quarter II 2004	1560	1560	-	1560	-
7. Preserving available drilling equipments	Quarter IV 2004	1280	1280	-	15200	-
<b>II. Technical and technological measures</b>		<b>6920</b>	<b>6920</b>	<b>-</b>	<b>6000</b>	<b>8384</b>
1.Reducing the down-time	Quarter III 2004	-	-	-	3500	-
2. Improving the investments	Quarter III 2005	5000	5000	-	-	8234
3. Optimisation of the revision and repair activity	Quarter II 2004	1200	1200	-	2500	-
4. Enforcing the measures for environment protection and reducing losses as a result of reintroducing it into the agricultural and forest circuit	Quarter III - IV 2004 Quarter I 2005	720	720	-	-	150
<b>III. Financial measures</b>		<b>122.888</b>	<b>-</b>	<b>122.889</b>	<b>122.889</b>	<b>-</b>
1. State aid	Quarter II 2004 – Quarter I 2009	74.057	-	74.057	74.057	-
2. State aid		48.831	-	48.831	48.831	-
<b>IV. Other measures</b>		<b>500</b>	<b>500</b>	<b>-</b>	<b>3600</b>	<b>1236</b>
1. Diversifying the activity of providing services in the motorcar repair field	Quarter IV 2004	500	500	-	-	1236
2. Direct supply from producers	Quarter II 2004	-	-	-	3600	-
<b>Total I + II + III + IV</b>		<b>137.188</b>	<b>14.300</b>	<b>122.888</b>	<b>166.478</b>	<b>125.961</b>

10. By enforcing the measures provided in the Restructuring Plan the company should function profitably in relation with the actual market possibilities of absorption. Considering that within the total restructuring cost, the financial measures represent 89.5%, respectively the state aid already received and the aid requested through the notification, the provisions of art. 12 para. (3) and para. (4) of the *Regulation on state aid for rescue and restructuring firms in difficulty* are not demonstrated. The provisions of art. 12 para. (3) stipulate that “the restructuring plan should allow the company to attain a new structure which will provide long-term stability and to function with its own resources”. The provisions of art. 12 para. (4) stipulate that “the restructuring plan must ensure the radical change to allow the company, after restructuring, to entirely cover the costs, including the depreciation and the financial expenses”. The analysis of the restructuring plan does not show the company viability after its implementation.

11. The state aid should be used only for economic-financial straightening of the company, not allowing the beneficiary, during the restructuring period to extend its drilling capacity. The restructuring cost is of 137,188,000,000 ROL. The beneficiary contribution for financing the restructuring plan is of 14,300,000,000 ROL, representing **only 10.4%** of the total restructuring cost. Thus, art. 14 of the *Regulation on state aid for rescue and restructuring firms in difficulty* is not observed by the beneficiary. This article provides that “the state aid beneficiaries must **significantly** contribute to the restructuring plan by their own resources”.

12. S.C. Foserco S.A. did not receive state aid observing thus the provisions of art. 18 of the *Regulation on state aid for rescue and restructuring firms in difficulty* stating that the restructuring aid could be granted only once.

## DECIDES

**Art. 1.** In the virtue of art. 12 para. (1) and para. (2) lett. d) of the *Law no. 143/1999 on state aid, with subsequent amendments and completions* it is prohibited to grant state aid to S.C. Foserco S.A. Tg. Ocna, due to the fact that the company does not observe the provisions of the *Regulation on state aid for rescue and restructuring firms in difficulty* referring to the beneficiary contribution and the straightening of the company viability by implementing the restructuring Plan.

**Art. 2.** This Decision becomes effective on its communication date.

**Art. 3.** In accordance with the provisions of art. 29 of the *Law no. 143/1999 on state aid, with subsequent amendments and completions*, the present Decision may be challenged by the interested persons before the Bucharest Court of Appeal, Contentious-Administrative Department.

**Art. 4.** This Decision will be communicated by the Secretariat General of the Competition Council to:

- the Ministry of Public Finances, 17, Apolodor Street, sector 1, Bucharest;
- S.C. Foserco S.A., 2, Avram Iancu Street, code 5467, Tg. Ocna, Bacau County

**Art. 5.** The Secretariat General and the Department for State Aid Authorisation of the Competition Council shall pursue the fulfilment of this Decision.

**PRESIDENT,**

**MIHAI BERINDE**