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D E C I S I O N N O . 281
FROM 12.10.2004

**referring to the state aid scheme for small and medium sized
enterprises, regarding the facilities provisioned by art. 18 in the Law
no. 137/2002 regarding the acceleration of the privatization process,
with the subsequent modifications and completions**

THE COMPETITION COUNCIL,

Having regard to the Decree no. 57/2004 regarding the appointment of the members of the Competition Council's Plenum,

Having regard to the provisions of the Competition Law no. 21/1996, published in the Official Monitor no. 88/30.04.1996, Part I, with the subsequent modifications and completions,

Having regard to the provisions of the Law no. 143/1999 regarding the state aid, published in the Official Monitor no. 370/3.08.1999. Part I, with the subsequent modifications and completions,

Having regard to the provisions of the European Agreement establishing an association between Romania, on one hand, and the European Communities and their Member States, on the other hand, ratified by the Law no. 20/1993, published in the Official Monitor no 73/12.04.1993, Part I,

Having regard to the Regulation regarding the state aid for rescuing and restructuring firms in difficulty,

Based on the following considerations,

PROCEDURE

1. By the address no. VP3/460 from 29.04.2004 registered at the Competition Council with the no. RS-AS 49/29.04.2004, the Authority for privatization and Administration of the State's Allotments (APAPS), based on the art. 5 align. (2) in the Law no. 143/1999 of the state aid, with the subsequent modifications and completions, notified the state aid scheme for small and medium sized enterprises, regarding the facilities provisioned by art 18 in the Law no. 137/2002 regarding the acceleration of the privatization, with the subsequent modifications and completions.

2. By the addresses no. DAAS/340/12.05.2004 and DAAS/412/14.06.2004 were requested information in completion to the notification form. As it resulted that the undertakings beneficiating from the state aid are firms in difficulty, according to the provisions of art. 2 in the Regulation regarding the state aid for rescuing and restructuring firms in difficulty, by the address CC2187/17.09.2004, it was requested the transformation of the notified scheme into a state aid scheme for restructuring SMEs in difficulty. The Authority for privatization and Administration of the State's Allotments submitted the answer to the supplementary information requested by the addresses no. P/10223/28.09.2004, registered at the Competition Council with no.CC 2262/29.09.2004.

3. The notification became effective at the date of 29.09.2004

DESCRIPTION OF THE STATE AID SCHEME

Objective

4. The restructuring state aid scheme aims the support of the SMEs in difficulty for re-organizing the main activity based on a restructuring plan which should insure the return to long term viability.

Legal Base

5. The legal base for granting the facilities according to the state aid scheme is represented by the provisions of art. 18 in the Law no.17/2002 regarding the acceleration of the privatization, with the subsequent modifications and completions.

Geographic coverage

6. The scheme applies to the SMEs in difficulty, on Romanian territory.

Field coverage

7. The state aid scheme applies in all activity sectors, excepting for the agriculture, fishery, the steel and coal sector.

The undertakings' eligibility

8. Specific restructuring state aid allocations within the notified scheme can be granted only to the companies in difficulty fulfilling the criteria for being considered SMEs, namely:

- a) they have less than 250 employees;
- b) they have an annual turnover not exceeding the equivalent, in ROL, of Euro 8 mill., or an annual result of the balance sheet not exceeding the equivalent in ROL of EURO 5 mill.;
- c) they fulfill the criteria of independency;

9. The companies benefiting of state aid within the scheme are considered “firms in difficulty” if it is met at least one of the following conditions:

- a) For a limited company, when it is noticed the loss of more than a half of the registered capital and, in addition, when more than a quarter of the capital was lost in the last 12 months;
- b) For a joint-stock company, when it is noticed the loss of more than a half of the registered capital, as it is in the accountant books of the undertaking, and, in addition, when more than a quarter of the capital was lost in the last 12 months;
- c) No matter the form of that specific company, when it fulfils the criteria provisioned by the legislation regarding the judicial

reorganization procedure and that of the bankruptcy, in order to be submitted to the collective procedures of bankruptcy.

10. The restructuring state aid allocations within the scheme can be granted only to the SMEs fulfilling the eligibility criteria and presenting a restructuring plan.

11. According to art. 2 align.(4) in the Regulation regarding the state aid for rescuing and restructuring firms in difficulty, a newly established undertaking is not eligible for granting the restructuring state within the scheme, even though its initial financial position is uncertain.

12. Any state aid granted to an undertaking not fulfilling the eligibility criteria shall be object of an individual notification, according to the art. 6 in the Law no. 143/1999 of the state aid, with the subsequent modifications and completions.

The state aid forms and the granting criteria

13. Allocating restructuring state aids within the scheme shall be made under the form of facilities at the payment of certain budgetary obligations. According to the provisions from art.18 in the Law nr.17/2002 regarding the acceleration of the privatization, with the subsequent modifications and completions, the small and medium sized enterprises in difficulty which were privatized, benefit of facilities for the payment of the budgetary obligations and their own debentures, as it follows:

- Total or partial exemption from the delayed obligations at 31.12.2001, representing duties, taxes, fees and other budgetary incomes, as well as those representing own debentures and those coming from budgetary credits managed by the involved public body. For the partial exemption, the difference shall be echeloned paid, according to the curve approved by the budgetary debtor, respectively by the involved public institution, as the case may be;
- Total or partial exemption from the delayed obligations at 31.12.2001, owned to the local budgets, representing duties, taxes, fees and other budgetary incomes, as well as those representing own debentures and those coming from budgetary credits managed by the local public

administration authority, which can be granted by the local council, through decision. For the partial exemption, the difference shall be echeloned paid, according to the curve approved by the local public administration authority;

- The exemption from the payment of delay majorities and of the penalties of any kind, relating to the budgetary obligations owed and unpaid until December the 31st, 2001, calculated until the date when took place the transfer of the ownership right of the shares enclosed in the budgetary obligations certificates issued by the budgetary creditors;

14. Are exempted from those provisions the undertaking's unpaid budgetary obligations, owed to the Social health security fund; for them are granted the following payment facilities:

- Echeloning at the payment of the unpaid budgetary obligations representing the contribution to the Social health security fund, for a 5 year period, with a grace period of 6 months, enclosed in the echeloning period;
- Exemption from the payment of the delay majorities and penalties relating to the obligations provisioned at letter a).

15. The facilities loose their effect if it wasn't made the transfer of the ownership right of the shares.

16. The payment facilities also loose their effect if the undertaking doesn't pay the current budgetary obligations for each fiscal year, with time limits starting with the date when the share buy- purchase contract was signed. If the company doesn't pay on time the current budgetary obligations, it can pay them in at most 90 days, together with the relating interests and penalties, but not later than December the 20th, of each fiscal year. For the undertakings which signed the share buy- purchase contract after the date when the present law came into force and until December the 31st, 2002 and for which the common granting orders for the payment facilities were communicated to the undertakings after the date of December the 1st, 2002, the budgetary obligations with time limits after the date when the share buy- purchase contract was signed and until December the 31st, 2002, together with the relating delay interests and penalties, shall be paid in 90 days from the date when the common order was signed.

17. Granting state aid allocations within the scheme shall be conditioned by the beneficiary's integral application of the restructuring plan which was approved by the Authority for privatization and Administration of the State's Allotments.

18. The restructuring plan, with duration as short as possible, must reinvigorate the undertaking on long term, in a reasonable time period, and based on some realistic assessments regarding its functioning conditions.

19. The quantum and the intensity of the state aid must be limited at the minimum strictly necessary in order to allow the restructuring according to the financial resources existing for each company benefiting of state aid within the scheme. The state aid's beneficiary must have a significant contribution to the restructuring plan, through its own resources, inclusively through sales of the assets unessential for the undertaking's survival or from external funding obtained under market conditions. For avoiding the distortion of the competition, the state aid wouldn't be granted in a quantum or in a form which could bring a liquidity excess for the firm, excess which could be used for aggressive activities for distorting the market and which have no connection with the restructuring process.

20. The state aid shall be used only in the purpose of the company's return to viability and shall not allow to the beneficiary, while applying the restructuring program, to extent its production capacity, excepting the case in which this is essential for the reinvigoration, but without causing any distortion of the competition.

21. For not allowing the undertakings' assistance in an improper proportion, according to art. 18 in the Regulation regarding the state aid for rescuing and restructuring firms in difficulty, the state aid, the restructuring aid must be granted only once.

The maximum quantum of the state aid

22. The state aid specific allocations within the notified scheme cannot exceed Euro 10 mill, inclusively any other state aid granted from other sources or within other schemes.

The state aid scheme budget

23. The scheme's maximum budget is in amount of ROL 1,693 bill. being divided on years in the following manner:

- Year 2004: ROL 893 bill;
- Year 2005: ROL 500 bill;
- Year 2006: ROL 300 bill.

The duration of applying the state aid scheme

24. The period of applying the state aid scheme is 2004-2006.

The estimated number of the beneficiaries of the state aid specific allocations within the scheme

25. The Authority for Commercializing the State's Assets estimates that within the notified scheme shall benefit of state aid specific allocations approx. 53 small and medium enterprises.

THE ASSESSMENT OF THE STATE AID SCHEME

Procedure

26. The state aid scheme for small and medium sized enterprises, regarding the facilities provisioned by the art. 18 in the Law nr. 17/2002 regarding the acceleration of the privatization, with the subsequent modifications and completions, was notified to the Competition Council by the Authority for the Capitalization of the Bank Assets in the name of all state aid grantors.

The state aid character of the notified scheme

27. Within the notified scheme, the financial support is granted under the form of certain facilities to the payment of the unpaid obligations of the undertakings, and namely: exemptions from the payment of the delayed obligations owed to the state budget, local budgets, echeloning to the payment of the budgetary delayed obligations representing the contribution to the social health security fund, exemptions from the payment of the delayed majorities and exemptions from the payment of the delay interests and

penalties, calculated until the date of the ownership right transfer or until the date of issuing the common order for granting facilities. The conditions for granting these facilities are better than for those obtained on the competitive market. The state aid elements enclosed by the financial support measures provisioned in the scheme give an economic advantage to the beneficiary undertakings.

28. Assessing the financial support measures, the Competition Council realized that it isn't any doubt that these are financed from state resources and give an advantage to the undertakings benefiting from the state aid, within the scheme, and that affects the trade with the Member States of the European Union.

29. In conclusion, the financial support measures granted within the scheme are considered state aids and fall under the incidence of the Law no. 143/1999 of the state aid, modified and completed by the Law no. 603/2003.

Granting conditions

30. The state aids' allocations shall be granted only to the SMEs in difficulty for their restructuring. Therefore, the Competition Council examines the restructuring state aid scheme; according to the provisions from art.5 align. (2) in the Law no. 143/1999 of the state aid, with the subsequent modifications and completions and of the provisions from the Regulation regarding the state aid for rescuing and restructuring firms in difficulty.

Field covering

31. The Competition Council underlined that the state aid scheme applies to all activity fields, excepting for the agriculture, fishery, steel and coal sector. Moreover, AVAS must assure itself that the state aid rules applied for specific fields shall be fulfilled.

Eligibility of the undertakings

32. Within the scheme provisioned by the art. 18 in the Law nr.17/2002 regarding the acceleration of the privatization, with the subsequent modifications and completions, specific allocations shall be received by the SMEs in difficulty. In this context, the Competition Council finds that these undertakings fulfill the following conditions:

- a) the undertakings are SME according to the provisions from art.2 in the Regulation regarding the state aid for SMEs;
- b) the undertakings are considered “firms in difficulty” according to the provisions from art.2 in the Regulation regarding the state aid for rescuing and restructuring firms in difficulty.

33. The Competition Council finds that the newly established undertakings are excluded from the granting of specific state aid allocations within the notified scheme according to art.2 align.(4) in the Regulation regarding the state aid for rescuing and restructuring firms in difficulty.

Granting conditions for the state aid

34. The forms and the criteria for granting the state aid allocations within the scheme represented by art.18 in the Law no.137/2002 regarding the acceleration of the privatization, with the subsequent modifications and completions, are those provisioned in the Regulation regarding the state aid for rescuing and restructuring firms in difficulty.

35. Granting specific allocations within the notified scheme is conditioned by the whole implementing of the restructuring plans approved by the Authority for Commercializing the State’s Assets as it is stipulated in art.26 align(1) in the Regulation regarding the state aid for rescuing and restructuring firms in difficulty.

36. The Authority for Commercializing the State Assets (AVAS) confirms that the restructuring plan shall include all the elements mentioned in art.12 in the Regulation regarding the state aid for rescuing and restructuring firms in difficulty. In the same time, AVAS confirms that the allocations of restructuring state aids within the scheme shall be granted only if the restructuring plans lead to the return to long term viability, based on realistic assessments regarding the future functioning conditions of that specific undertaking.

37. The scheme provisions that the beneficiaries of state aid allocations wouldn’t increase their production capacities for the period of the restructuring plan, as it is stipulated in art.26 align(1) letter b) in the Regulation regarding the state aid for rescuing and restructuring firms in difficulty.

38. The quantum and the intensity of the specific state aid allocations within the notified scheme are limited to the strictly necessary minimum, for allowing the restructuring, depending on the financial existing resources of that specific undertaking. The Competition Council finds the following:

a) the undertakings benefiting from the state aid allocations must have a significant contribution to the restructuring plan, this contribution being funded from its own resources;

b) the state aid allocations shall be granted within a quantum not leading to a liquidity excess for the undertaking, excess that are not to be used in aggressive activities distorting the market and without any relation to the restructuring process;

c) the state aid allocations are used only with the purpose of the company's return to the viability and don't allow to the beneficiaries to, while applying the restructuring plan, to extent its production capacity, excepting from the case when this is essential for reinvigorating that specific undertaking, but without causing a distortion of the competition;

d) regarding the presented facts, the Competition Council considers that the conditions from art. 14 in the Regulation regarding the state aid for rescuing and restructuring firms in difficulty.

39. The restructuring state aid which will be benefited by the undertakings within the notified scheme is granted only one time, fulfilling this way the principle "first time/ last time" stipulated at art.18 in the Regulation regarding the state aid for rescuing and restructuring firms in difficulty.

40. The notified scheme determines that for a beneficiary, the maximum quantum of the state aid shouldn't exceed Euro 10 mill, including any other state aid granted from other sources or within other schemes. Therefore, the provisions from art.27 in the Regulation regarding the state aid for rescuing and restructuring firms in difficulty are fulfilled.

CONCLUSIONS

41. Relating to the presented facts, the Competition Council finds that the state aid scheme provisioned by art.18 in the Law no.137/2002 regarding the acceleration of the privatization, with the subsequent modifications and completions, is compatible with the normal competitive environment and doesn't unduly affect the trade with the Member States of the European Union.

REPORTING AND MONITORING

42. The Authority for Commercializing the State's Assets shall submit to the Competition Council annual reports regarding the application of the state aid scheme provisioned by art.18 in the Law no.137/2002 regarding the acceleration of the privatization, with the subsequent modifications and completions, in accordance with the art.28 in the Regulation regarding the state aid for rescuing and restructuring firms in difficulty.

DECIDES

Art.1. The financial measures granted based on the state aid scheme provisioned by art.18 in the Law no.137/2002 regarding the acceleration of the privatization, with the subsequent modifications and completions, are considered state aids and fall under the incidence of the Law no.143/1999 of the state aid, modified and completed by the Law no.603/2003.

Art.2. The state aid scheme for small and medium sized enterprises, for their restructuring, is authorized in the basis of art.12 align.(2) leter c) corroborated with art.14 align.(1) letter e) in the Law no.143/1999 of the state aid, with the subsequent modifications and completions, with the condition to fulfill art.3, art.4 and art.5 from the present decision.

Art.3.. The undertakings benefiting from the state aid allocations within the scheme mustn't increase their production capacity over the level of the year 2003.

Art.4. The undertakings benefiting from the state aid allocations within the scheme have to completely implement the assumed restructuring plan.

Art. 5. The Authority for Commercializing the State's Assets must notify to the Competition Council any modification which came in the restructuring plans of the beneficiaries of the state aid scheme for small and medium sized enterprises, in order to restructure them.

Art.6. The total budget of the state aid scheme for SMEs for their restructuring is of ROL 1,693 billions.

Art.7. The present decision becomes applicable at the date of its communication.

Art.8. According to the provisions of art.24 in the Law no.143/1999 of the state aid, with the subsequent modifications and completions, the Authority for Commercializing the State's Assets shall submit to the Competition Council information regarding the state aid scheme, for its inventorying and monitoring.

Art.9. According to the provisions of Art. 29 of the Law no. 143/1999 on state aid, with subsequent amendments and completions, the present Decision may be appealed by concerned persons before the Bucharest Court of Appeal, the Administrative Section, in 30 days from its communication.

Art. 10. The present Decision shall be communicated by the Secretariat-General of the Competition Council to:

- the Authority for Commercializing the State's Assets, 50, Cpt. Av. Alexandru Serbanescu st., sector 1, Bucharest;

Art.11. The Secretariat-General and the Directorate for State Aid Authorization of the Competition Council shall pursue the fulfillment of the present Decision.

PRESIDENT

MIHAI BERINDE