

D E C I S I O N N O 297
FROM 28.10.2004
regarding the modifying of the state aid granted to
SC AUTOMOBILE DACIA SA PITESTI

THE COMPETITION COUNCIL

Having regard to the provisions of the Decree no. 57/2004 on the appointment of the members of the Competition Council;

Having regard to the provisions of the Competition Law no. 21/1996, published in the Romanian Official Gazette no. 88, Part I, of 30,04,1996, amended and completed by Government Emergency Decree no. 121/2003, approved by Law no. 184/2004;

Having regard to the provisions of the Law no. 143/1999 on State aid, published in the Romanian Official Gazette no. 370, Part I, of 03,08,1999, amended and completed by Law no. 603/2003 and by Government Ordinance no. 94/2004 on the regulation of some financial measures;

Having regard to the provisions of the European Agreement establishing an association between the European Communities and their Member States, on the one part, and Romania, on the other part, ratified by Law no. 20/1993, published in the Romanian Official Gazette, Part I, no. 73 of 12,04,1993;

Having regard to the provisions of the Regulation on regional state aid, published in the Romanian Official Gazette, Part I, no. 340 of 19,04,2004;

Having regard to the provisions of the Multisectorial Regulation regarding the regional state aid for large investment projects, published in the Romanian Official Gazette, Ist Part, no.165 of 17,03,2003;

Having regard to the provisions of the Regulation amending and completing the Multisectorial Regulation regarding the regional state aid for large investment projects, published in the Romanian Official Gazette, Ist Part, no.850 of 16,09,2004,

On the following grounds:

I. PROCEDURE

(1) By the addresses no. 290118/26,09,2003 and no. 107383/16,02,2004, registered at the Competition Council with the no. RS-AS 56/26,09,2003, respectively no. RS-AS 13/17,02,2004, the Ministry of the Public Finance submitted the notification of the state aid, having as beneficiary S.C. AUTOMOBILE DACIA S.A. Pitesti.

(2) By the note no. 266.692/27,09,2004, the Ministry of the Public Finance brought to the knowledge of the Competition Council its intention to replace the facility consisting in exemption from the tax on profit related to the year 2007 with the exemption from the custom duties and of the VAT for the acquisitions designated for the accomplishment of the investments.

2. HISTORY. COMPETITION COUNCIL'S DECISIONS NO. 428/2003 AND 119/2004

(3) By the privatization contract the Renault Group assumed a number of obligations among which: the promotion of an investment program of USD 219.7 mill., qualitative rehabilitation of the range of products existing in fabrication, production of a new automobile as intermediary phase for proving the capability of the Enterprise and its employees and the production of a completely new auto-vehicle Dacia brand of Euro 5000 final price at the customer. In return, the Romanian State assumed the granting of a series of facilities, provisioned in the *GD. no. 445/1999 regarding the granting of facilities and the conditions of accomplishing the investment* and in *GD no. 794/1999 for approving the Development Program of S.C. AUTOMOBILE DACIA S.A Pitesti, Arges county, as well as of the undertakings where it owns at least 90% from the total number of shares.*

(4) The granted state aid consists in the following facilities:

- Exemption from the interests for unpayment on time of the delayed obligations, representing the tax on roads;
- Exemption from the custom duties and from the payment of the VAT of the imported goods, as well as the exemption from the VAT of the goods acquisitioned on the domestic market, consisting the amortizable assets;
- Exemption from the custom duties and from the payment of the VAT for the import of technological equipments, machines and gears, consisting the amortizable assets ;
- granting of a 65 days adjustment for paying the 5% quota from the value of the auto-vehicles produced and delivered on the domestic market, for a 5 years time limit from the date of the total payment of the shares' price;

- granting of a 3 years adjustment from the payment of the VAT relating to the commercialization on the domestic market from their own production, starting with the date of the total payment of the shares' price;

- allocating funds for the Development Program of S.C. AUTOMOBILE DACIA S.A Pitesti, Arges county as well as for the undertakings where it owns at least 90% from the total number of shares;

- exemption from the payment of the tax on profit for a 5 years period starting with the first financial exercise whereit obtains profit, under the condition that the profit shall be realized in maximum 3 years from the date of the total payment of the acquisitioned shares.

(5) By the decision no 428/2003, the Competition Council authorized the state aid under the form of the abovementioned facilities, excepting for the exemption from the payment of the tax on profit because the undertaking didn't registered profit till the date of the notification.

(6) Subsequent the coming into force of the Fiscal Code it was also provisioned the facility consisting in the exemption from the payment of the tax on profit, The Ministry of Public Finance has renotified the state aid under the form of exemption from the payment of the tax on profit.

(7) This facility made the object of Decision no. 119/2004, the Competition Council underlining that it can't be talked about a new aid but also of the facility granted at the privatization.

(8) Both decisions issued by the Competition Council aim the same investment program in the autovehicles' sector carried out during 2003-2007 in amount of Euro 628.58 mill, from which eligible costs represent Euro 619.7 mill.

(9) The state aid was granted for accomplishing a large investment project in the auto-vehicles' sector, the total sum authorized in th two decisions by the Competition Council being of ROL 3,695,408,956,000 .

(10) The Ministry of Public Finance, by the note no. 266.692/27,09,2004, brought to the Competition Council's knowledge its intention to replace the facility consisting in the exemption from the payment of the tax on profit relating to the year 2007 with the exemption from the payment of the custom duties and of the VAT for the acquisitions designated for accomplishing investments.

3. LEGAL BASE FOR GRANTING THE STATE AID

- GD no. 445/1999 on facilities granting and the conditions for achieving the investments at S.C. AUTOMOBILE DACIA S.A, modified by the GD no.898/1999 for amending the Annex no. 1 of GD no. 445/1999 regarding the

granting of facilities and conditions for achieving the investments at S.C. AUTOMOBILE DACIA S.A;

- GD no. 794/1999 for the approval of the Development program of S.C. AUTOMOBILE DACIA S.A Pitesti, Arges county, as well as of the undertakings to which it owns participations of at least 90% from the total number of shares;
- GEO no. 40/2002 regarding the recovery of budgetary arrears, approved by the Law no.491/2002;
- Fiscal Code of Romania, art. 38 (9), approved by Law no. 571/2003,
- GO no 83/2004 for the modification and completion of the Law no. 571/2003 regarding the Fiscal Code.

4. THE BENEFICIARY OF THE STATE AID

(11) The beneficiary of the state aid measure is S.C. AUTOMOBILE DACIA S.A. Pitesti.

(12) The Automobile Plant of Pitesti was created in 1966 and it was transformed into S.C. AUTOMOBILE DACIA S.A. PITESTI in 1991, being registered in the Commerce Register with the no. J03/81/1991. Now the number of employees is of 13,460.

(13) S.C. AUTOMOBILE DACIA S.A. was privatized on 29,09,1999, the date of the ownership transfer, by acquisition of the majority shares package (50.96% from the social capital) by the group Renault from the Fund of State Ownership.

(14) By the Decision of the Competition Council no. 203/1999 was authorised the economic concentration by the acquisition by Renault of the majority shares package of S.C. AUTOMOBILE DACIA S.A.

(15) On 30,06,2004, the social capital of S.C. AUTOMOBILE DACIA S.A. PITESTI in amount of 25,447,582,670,000 ROL was been held in a proportion of 99.43% by the Group Renault and 0.57% by other shareholders.

(16) The company activates in the industry of the road transport automobiles, the main activity object of S.C. AUTOMOBILE DACIA S.A. Pitesti being the production of vehicles, parts and auto subsets.

(17) Reference points in the activity of S.C. AUTOMOBILE DACIA S.A.:

- 1968 –1978 – on the basis of the cooperation contract with RENAULT , starts the production under licensee of R8- Dacia 1100 and R12- Dacia 1300 Berline vehicles;
- 1995 – starts the production Dacia Nova – vehicle of native conception;
- 1998 – fabrication of Dacia vehicle no. 2,000,000;
- 1999 – by the purchase of the majority pack of shares, Dacia become the part of Group Renault;

- 2000 – starts the production of Dacia SuperNova (3 versions) equipped with Renault engine;
- 2002 – starts the production of the light commercial vehicle Dacia Pick Up equipped with Diesel engine produced by Renault;
- 2003 – starts the production of Dacia Solenza (4 versions).

(18) The products and services nomenclature of S.C. AUTOMOBILE DACIA S.A. appears as follows:

- DACIA vehicles in the variants Berline, Break, SuperNova and light commercial vehicles on petrol and diesel oil in the variants Pick-up, Drop Side, Double Cab;
- Spare parts for Dacia range;
- Service in the guarantee period and after guarantee.

(19) The company activates on the new vehicles production market and the Dacia spare parts market.

(20) On new vehicles market, the quota held by S.C. AUTOMOBILE DACIA S.A., in Romania, had the following evolution:

- year 2000	62.7%;
- year 2001	59.9%;
- year 2002	49.4%;
- year 2003	48.8%.

On Dacia spare parts market activates a big number of companies, the competition being very strong. The undertaking has exclusivity in manufacturing for a low number of products, such as: engine cartel, chiulasa, exterior panels for new models.

(21) The clients for Dacia auto vehicles are physical and legal persons (the Ministry of Internal Affairs, the Romanian Post, the State Lottery and taxi companies), the sales to physical persons representing 69% from the total sales.

The main clients for spare parts are:

- the owners of Dacia vehicles,
- trading companies and budgetary entities holding important parks of vehicles,
- the service and distribution Dacia network and
- the repair shops authorised by RAR.

(22) The main competitors on the new vehicle market are Daewoo Romania and the cars importing companies. By an aggressive price politics and promotional actions, Daewoo Romania succeeded in returning to an appreciable market share (from 7.7% in 2001 to 17.3% in 2003). A significant evolution on the Romanian market had also the imported car sells, arriving in 2003 to the situation that imported cars represented one of three commercialised vehicles.

The main competitors on the spare parts market are:

- the first assembly suppliers of Dacia who commercialised by their own distribution chains;

- the manufacturers of Dacia spare parts, which aren't agreed producers by Dacia, but which have certificated or homologated products according to the in force regulations;
- the manufacturers of not homologated spare parts, counterfeit, pirate parts;
- hole sellers;
- retailers;
- commercialisation network existent in the petrol stations.

(23) The existent production capacity may assure the production of 420 vehicles per day. The manufacturing flux is organized on four production departments, namely: press, car body, painting and setting.

(24) S.C. AUTOMOBILE DACIA S.A produces especially for the domestic market, the percent of the Romanian market reaching in 2003 92.5% from the total realised turnover. The products of the company are exported in countries from Europe, Asia, South America, Central America and Africa.

5. MEASURES OF FINANCIAL SUPPORT GRANTED BY THE STATE TO SC AUTOMOBILE DACIA SA

(25) – (28) [...] ¹

6. THE STATE AID CHARACTER OF THE FINANCIAL SUPPORT MEASURES GRANTED TO THE UNDERTAKING

(29) The financial support measures granted to S.C. AUTOMOBILE DACIA S.A. Pitesti can offer an advantage in comparison with its competitors and therefore to distort the competition. The financial measures can therefore constitute state aid in accordance with art. 2 in the Law no. 143/1999 regarding the state aid, modified and completed by the Law no. 603/2003 and the Competition Council has to asses their compatibility with the normal competitive environment.

(30) Analyzing the financial support measures, the Competition Council has found that there is no doubt that these are funded from state resources, have selective character, giving an advantage to AUTOMOBILE DACIA S.A. Pitesti. In the same time, there is no doubt that the taken financial measures affect the trade with the European Union's Member States.

(31) In conclusion, the granted financial support measures are considered under the incidency of the Law no. 143/1999 regarding the state aid, modified and completed by the Law no. 603/2003.

¹ Confidential data

(32) As the beneficiary is an undertaking producing and assembling auto-vehicles, and the state aid's purpose is to realise a large investment project for the period 2003-2007, the Competition Council assessed this state aid according to the provisions from the Multisectorial Regulation regarding the regional state aid for large investment projects.

(33) The undertaking is situated in Pitesti, Arges County, Romania. The entire Romanian territory fulfils the conditions for being considered as assisted area according to art. 87(3)(a) in the Treaty, the maximum intensity admitted within the Map of regional state aid being of 50% for large companies, adding 15% for SME's.

7. ASSESSMENT OF THE STATE AID MEASURES GRANTED TO S.C. AUTOMOBILE DACIA S.A.

(34) During 1990 – 1999, SC AUTOMOBILE DACIA SA had two important targets: to bear up as auto vehicles producer and to find a powerful investor, which would involve itself in transforming the Dacia Enterprise from a no future company, in a firm of European level and long term perspective.

(35) In 1999 it was signed the privatization act for the Dacia Enterprises with the French group Renault, which committed itself, among others, to the following:

1. Qualitative rehabilitation of the products range existing in fabrication;
2. Promoting an investments program of USD 219.7 mill. ;
3. Producing an automobile as intermediary phase for proving the capability of the Enterprise and its employees;
4. Producing a completely new vehicle under the Dacia brand, with Euro 5,000 final price at customer.

(36) The investment plan assumed by the company for the period 2003-2007 was established in the fundamental vector of the company's actions starting with the assuming of the objectives having as base the increase of the labor productivity as well as of the quality, as base of insuring the competitiveness of the manufactured products, according to the concept of the closeness to the client by offering a range of competitive, performing, viable products also corresponding from the point of view of the provisions in the field. The necessary of investments is dictated by the trends on the auto- vehicles market, by the physical volume of previewed works as well as the technical requests imposed by the beneficiaries.

(37) The Romanian State agreed with the giving up to some sure or previewed incomes, due to the fact that it is a large investment project in the auto-vehicles sector, when the beneficiary finances approx. 85% from the investment effort and taking into consideration the long term effects of this investment, much over 5 years, as well as the favorable consequences on national economic plan.

(38) The assessment criteria are the following: the undertaking's eligibility, the regional aid beneficiary's contribution, the regional state aid's intensity (the regional readjusted ceiling) and the maintenance of the investment.

7.1. ELIGIBILITY OF S.C. AUTOMOBILE DACIA S.A.

(39) – (48) [...] ²

7.2. CONTRIBUTION TO REGIONAL DEVELOPMENT. INCENTIVE EFFECT

(49) As it was mentioned at paragraph (35) the Romanian State agreed to let off some certain or expected incomes, due to the size of the investment project and taking into account the long term effects of the investment's effort, much more than 5 years, as well as the favorable consequences in economic and social perspective.

(50) Therefore, a network of suppliers is developing in Romania, insuring a high degree of national integration of the parts and components, fact having direct consequences on the number of new jobs created on the domestic market. Until now, the Renault group was accompanied by some firms which already are installed in the area, companies like:

- Johnson Control, which created 464 jobs;
- Valeo Electrice, manufacturer of auto cables, which created 480 jobs;
- ACI, manufacturer of motor and non-motor decks, which created till now 630 jobs, expecting that until 2007 will reach to 1000 jobs;
- EuroAPS, manufacturer of boards checking tables, doors pannels and interior elements, which created until now 480 jobs expecting that until 2007 will reach to 700 jobs;
- PIRIOUS, manufacturer of metal constructions, which created 96 jobs, and so on..

(51) Also, after launching Dacia Logan, other European suppliers also expressed their desire to open branch offices in Romania, hence creating new jobs.

(52) Within the investment project, an important place is held by the factory of CKDs (Completed KnockDown) which has as main purpose the contracting, colleting of parts and components from the suppliers from Romania and from other European countries, and their gathering in CKD collections. This shall also have a special social effect, by increasing the number of jobs newly created, at the Romanian suppliers as well as at the European ones.

(53) The investments made by the company also had as effect the downstream development of a whole network for commercialization, service after selling and insuring the spare parts for the entire Romanian territory.

² Confidential data

7.3. THE INVESTMENTS PROJECT

(54)- (67) [...] ³

7.4. ELIGIBLE COSTS

(68) – (72) [...] ⁴

7.5. THE BENEFICIARY'S CONTRIBUTION

(73) In the event of guaranteeing a viable and efficient level of the initial investments benefiting of state aid, the beneficiary's contribution designated to their financing must be of at least 25% (article no.8(1) in The Regulations regarding the state regional aid). This minimum contribution of 25% must not contain any aid (art. 8 (2) in The Regulations regarding the state regional aid).

(74) The state aid's beneficiary shall contribute to the financing of the investment project with an amount of ROL 22,029,165,354,000, representing 88.8% from the total of the eligible costs (24,820,405,720,000 ROL). This value is over the limit of 25% imposed by art.8 in The Regulations regarding the state regional aid.

(75) The company's contribution to the financing of the investments shall be made by capital infusion, in cash, by the majority shareholder RENAULT .

7.6. THE STATE AID'S INTENSITY

(76) According to art. 28(1) a) in the Multisectorial Regulation regarding the regional state aid for large investment projects, the maximum intensity of the regional state aid for investments in the auto- vehicles sector, will be 30% from the regional ceiling.

(77) The state aid's value for S.C. AUTOMOBILE DACIA S.A. Pitesti is of ROL 2,791.2 bill., and the total eligible costs amount ROL 11,2%, bill. After the calculation resulted an intensity of 14.88%, so that the regional ceiling adjusted for large investment projects in the auto- vehicles sector is observed.

7.7. MAINTAINING THE INVESTMENT

(78) According to Article 11 of the regulation on regional aid for initial investment must be made conditional, through its method of payment or through the conditions associated

³ Confidential data

⁴ Confidential data

with its acquisition, on the maintenance of the investment in question for a minimum period of five years.

(79) For accomplishing the investment project, the state aid's beneficiary already allocated for the year 2003, the amount of Euro 149.1 bill.

(80) Having into view the investments categories as well as the period of implementing them, the Competition Council concluded that it is fulfilled the condition provisioned at art.11 in the Regulation regarding the regional state aid, according to which the state aid for initial investment is conditioned by the maintenance of the investment for a minimum period of 5 years.

8. CONCLUSIONS

(81) The information presented in the notifications submitted to the Competition Council lead to the conclusion that the state aid granted to S.C. AUTOMOBILE DACIA S.A. Pitesti is not capable of significantly affecting a normal competitive environment and does not infringe the appropriate application of the international treaties Romania is a part of.

(82) Our analysis shows that the state aid amounting ROL 2,791.2 bill., fulfills the granting criteria in accordance with the Regulation regarding the regional state aid and the Multisectorial Regulation regarding the regional state aid for large investment projects.

DECIDES

Art. 1. The measure notified by the Ministry of Public Finance for the recipient S.C. AUTOMOBILE DACIA S.A. Pitesti constitutes state aid for the purposes of Article 2 of Law 143/1999, amended and completed by Law 603/2003 and by Go 94/2004 on regulation of financial measures.

Art. 2. Under Article 12 par. 2 section (c), read in conjunction with Article 14 par. 1 section (i) of Law 143/1999, with subsequent amendments and completions, we authorize the state aid for regional development for large investment project in cars' sector for S.C. AUTOMOBILE DACIA S.A. Pitesti, under the condition of fulfilling art3 and 4 from the present Decision.

Art. 3. The company must commit itself to maintain the investments for a minimum period of 5 years. Contrary, the state aid will be recovered.

Art. 4. S.C. AUTOMOBILE DACIA S.A. Pitesti shall not benefit of any state aid for the investment project related to the state aid authorized by the present Decision.

Art. 5. The maximum state aid value that S.C. AUTOMOBILE DACIA S.A. Pitesti can benefit of is of ROL 2,791,240,366,000.

Art. 6. The present Decision becomes effective on its communication date.

Art. 7. 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 appealed to the Bucharest Court of Appeal, division Contentious Administrative, in 30 days from its communication date.

Art. 8. The present Decision will be communicated by the General Secretariat of the Competition Council to:

- Ministry of Public Finances, 17, Apolodor Street, sector 1, Bucharest;
- S.C. AUTOMOBILE DACIA S.A., 1, Uzinei Street, Mioveni, Arges County.

Art. 9. The General Secretariat and the Department for State Aid Authorisation of the Competition Council shall pursue the fulfilment of this Decision.

PRESIDENT

MIHAI BERINDE