

## **DECISION OF THE COMPETITION COUNCIL**

**No. 305 dated 12.11.2004**

**regarding the state aid scheme for small and medium sized enterprises –  
*The multi-annual program for supporting the development of the small  
and medium sized enterprises by funds within the limit of the sums paid  
for the tax on the reinvested profit***

### **THE COMPETITION COUNCIL,**

Based on:

Taking into consideration the Decree no. 57/2004 regarding the appointment of the members of the Competition Council Plenum,

Taking into consideration the dispositions of the Competition Law no. 21/1996, published in the Official Gazette no. 88/April 30, 1996, Part I, with the subsequent modifications and completions,

Taking into consideration the dispositions of the Law no. 143/1999 regarding the state aid, with the subsequent modifications and completions, published in the Official Gazette no. 370, Part I, on 03.08.1999, with the subsequent modifications and completions,

Taking into consideration the dispositions 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 Gazette no. 73, Part I, on 12.04.1993,

Taking into consideration the Regulation regarding the state aid for SME ,

Taking into consideration the Regulation on the regional state aid ,

**Based on the following grounds:**

### **PROCEDURE**

1. By the address no. 494/CP on 06.09.2004 registered to the Competition Council with no. RS-AS 80/10.09.2004, the National Agency for SME and Cooperatives, based on the Law no. 143/1999 of the state aid, with the subsequent modifications and completions, notified the state aid scheme – the *Multi-annual Program for supporting the development of the small and medium sized enterprises by funds within the limit of the sums paid for the tax on the reinvested profit*.

2. By the address no. DAAS/812/20.10.2004 was requested information in completion to the notification form. The information was submitted by the National Agency for SME and Cooperatives with the address no. 665/SG/22.10.2004, registered at the Competition Council with the no.DAAS/816/22.10.2004.

3. The notification became effective at the date when the information requested for completing the notification from were received.

## **DESCRIPTION OF THE STATE AID SCHEME**

### **Objective**

4. The state aid scheme aims the support of the SMEs through funds within the limit of the sums paid for the tax on reinvested profit.

5. The main objective of *Multi-annual Program for supporting the development of the small and medium sized enterprises by funds within the limit of the sums paid for the tax on the reinvested profit* is the increase of competition and the capitalization of the small and medium sized enterprises by granting funds in the limit of the sums paid for the tax on the reinvested profit, taking into account the fact that the SME are an essential element for the development of a lasting economy. The sector of SME is the most important absorption factor for the working force and is the sector with the highest flexibility and mobility in adjusting to the market demand.

### **Legal Base**

6. The legal base for granting the facilities is *GD no.1461/2004 regarding the approval of the Multi-annual Program for supporting the development of the*

*small and medium sized enterprises by funds within the limit of the sums paid for the tax on the reinvested profit.*

### **Geographic coverage**

**7.** The scheme applies to the SMEs on Romanian territory.

### **Field coverage**

**8.** The state aid scheme applies to SME in all activity sectors, excepting for the activities related to the production, processing or commercializing the products provisioned in the annex no.3 to the Regulation regarding the state aid for SME.

### **The undertakings' eligibility**

**9.** Specific state aid allocations within the notified scheme can be granted only to the companies 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;

**10.** In the same time, can benefit of specific state aid allocations the undertakings cumulatively meeting the criteria to be considered small enterprises, namely:

- a) they have less than 50 employees;
- b) they have an annual turnover not exceeding the equivalent, in ROL, of Euro 7 milli. 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.

**11.** The state aid allocations within the scheme can be granted only in relation with the initial investment. According to art. 5align.(1) in the Regulation regarding the regional state aid, by initial investment is understood an investment in fix capital related to the creation of new units, extension of an existing unit or the start of an activity involving a fundamental change in the

product or the manufacturing process of an existing unit, by rationalization, diversification or modernization.

**12.** According to art. 5 align.(2) in the Regulation regarding the regional state aid are excluded from the category of initial investments the following:

- the replacement investment designated for preserving the production potential which doesn't bring any extra income but has the economic function to maintain it;
- the measures designated for financial restructuring of a firm in difficulty.

**13.** The state aid granted within the scheme is calculated as percentage points from the value of the accomplished investment. This value is established based on the expenses corresponding to the investments' elements, respectively lands, buildings, and equipments which form the standard base provisioned in annex no. 2 to the Regulation regarding the regional state aid.

**14.** The eligible costs may also include some categories of investments in intangible assets, respectively investments in technological transfer by obtaining the patent, license or know-how rights, or of the technical unpatented knowledge, if there are met the conditions provisioned in art. 7 align. (2) in the Regulation on the regional state aid, namely:

- to be exploited exclusively within the enterprise benefiting of the regional state aid;
- to be considered amortizable asset elements;
- to be acquisitioned from a third party under market conditions;
- to be written in the accountability of the company benefiting from regional state aid and to remain in its patrimony for a period of at least 5 years.

**15.** For guaranteeing a viable and efficient level of the initial investment benefiting of specific state aid allocations within the scheme, the beneficiaries' contribution designated for these investments must be, according to art. 8 in the Regulation regarding the regional state aid, of at least 25%. This contribution cannot be object of any other state aid.

**16.** The gross intensity of the state aid allocations mustn't exceed the ceiling for the regional state aid with more than 15% gross points, with the condition that the net intensity of the state aid doesn't exceed 75%.

**17.** According to art. 11 in the Regulation regarding the regional state aid, the state aid allocations within the scheme are conditioned by the maintenance of the investment for which the state aid was granted, for at least 5 years.

**18.** If state aid allocations within the scheme are granted in view of realising some large investment projects, the general framework of granting aid represented by the Regulation regarding regional state aid and by the Regulation regarding state aid for SMEs, is completed with the specific rules contained in the Multisectoral Regulation regarding state aid for large investment projects.

### **The state aid forms and the granting criteria**

**19.** The state aid allocations within the scheme shall be granted under the form of funds with a maximum value given by the value of the tax related to the profit reinvested by the company (for example: the profit of a company at the end of 2004 is of ROL 10 mill. From this profit the company invests ROL 5 mill. The amount of the state aid is in this case  $\text{ROL } 5,000,000 \times 25\% = 1,250,000 \text{ ROL}$ . If the company would have invested the whole profit of ROL 10 mill, then they could have benefited of a state aid in maximum amount of  $\text{ROL } 10,000,000 \times 25\% = 2,500,000$ ).

**20.** The reinvested profit represents the sums used for making the investments in tangible and intangible assets provisioned by art. 24 align. (6) letter. b) and align. (10) in the Law no. 571/2003 regarding the Fiscal Code, related to the activity object, exclusively those needing other financing sources than the gross profit, such as the credits, non-reimbursable or civil loans.

**21.** The possible beneficiary will submit the request for fund allocation, together with a number of justificative documents, the National Agency for SME and Cooperative. The assessment of the request for fund allocation will be made by the Implementing Unit for the Program within the National Agency for SME and Cooperative. Based on the documents showing the investments' value made from the reinvested profit, respectively: contracts, fiscal bills, account excerpts, payment order, fiscal receipts and other fiscal documents that can prove the actual payment, will be established the funds from which the company will benefit by the application of the tax on profit quota (25%) to the value of the investment, proved by documents.

**22.** In order to benefit from state aid allocations within the scheme, the beneficiaries must prove the accomplishment on time, of the obligations to be paid for contributions, taxes and duties towards the state budget, provisioned by the legislation in force, therefore they must prove that they paid the tax on profit accordingly to the Fiscal Code's provisions.

**23.** The qualification criteria for the undertakings to be registered within the notified state aid scheme are the following:

- a) they have totally private social capital ;
- b) they met the conditions provisioned by the Law no. 346/2004 for stimulating the establishment and the development of the SME, in order to be considered a SME;
- c) they fulfilled, in time, the liabilities for contribution payment, taxes and duties to the state budget, provisioned by the legislation in force;
- d) they are not in bankruptcy or liquidation, don't have their business administered by the syndic, they don't have suspended commercial activities or aren't in a situation similar to those mentioned before, regulated by law;
- e) they are not subject of a legal procedure for declaring them in one of the situations provisioned for at letter.d) ;
- f) they closed the fiscal year previous to the present one with a positive balance sheet and reinvested the whole profit or just a part of it;
- g) they didn't applied the accelerated capital depreciation provisioned by the Fiscal Code.

### **The amount of the state aid**

**24.** The maximum amount base for calculating the value of the stimulation fund is that paid by the undertaking with the title of tax on reinvested profit, starting with the IV trimester of 2004. For the year 2005, the funds shall be allocated within the limit of the sums paid for the tax on the profit reinvested in tangible or intangible assets related to the activity object, exclusively those with other financing sources than the gross profit.

**25.** The intensity of the state aid granted as specific allocation within the state aid scheme - *Multi-annual Program for supporting the development of the small and medium sized enterprises by funds within the limit of the sums paid for the tax on the reinvested profit*, cannot exceed the ceiling for the regional state aid, with more than 15% gross points, under the condition that the net intensity of the state aid doesn't exceed 75%.

### **The state aid scheme's budget**

**26.** The maximum state aid scheme's budget for 2005 is of ROL 245 bill.

### **The duration of applying the state aid scheme**

**27.** The period of applying the state aid scheme is the year 2005. The duration of the scheme can be prolonged for the period 2006-2007. Any prolonging of the duration of the state aid scheme must be notified and submitted for the analysis of the Competition Council before being made.

### **The estimative number of the aid specific allocations' beneficiaries within the scheme**

**28.** At the moment of the notification, the National Agency for SME and Cooperatives couldn't assesses the number of beneficiaries of the *Multi-annual Program for supporting the development of the small and medium sized enterprises by funds within the limit of the sums paid for the tax on the reinvested profit*.

## **THE ASSESSMENT OF THE STATE AID SCHEME**

### **Procedure**

**29.** The state aid scheme for SMEs- *Multi-annual Program for supporting the development of the small and medium sized enterprises by funds within the limit of the sums paid for the tax on the reinvested profit* was notified to the Competition Council by the National Agency for SME and Cooperatives.

### **The state aid characteristic of the notified scheme**

**30.** Within the notified scheme, the financial support is granted under the form of certain non-reimbursable funds established within the limit of the tax related to the reinvested profit. The conditions in which these facilities are granted are better than those get by the undertakings on the competitive market. Under these conditions, the financial support measure provisioned by the scheme gives an economic advantage to the benefiting companies.

**31.** Assessing the financial support measure, the Competition Council found that there is no doubt that this is financed from state resources, give an advantage to the benefiting companies and affect the trade with the member States of the European Union.

**32.** In conclusion, the financial support measure granted in the basis of the scheme – *the Multi-annual Program for supporting the development of the small and medium sized enterprises by funds within the limit of the sums paid for the tax on the reinvested profit* is considered state aid and falls under the incidence of the Law no. 143/1999 of the state aid, with the subsequent modifications and completions.

### **Granting conditions**

**33.** The state aid allocations shall be given only to the SMEs cumulatively meeting the conditions presented at point 20 of this Decision. Therefore, the Competition Council examines the notified state aid scheme in accordance with the provisions of art.5 align. (2) in the Law no. 143/1999 of the state aid, with the subsequent modifications and completions, as well as in accordance with those from the Regulation regarding the regional state aid.

### **Field coverage**

**34.** The Competition Council specifies that the state aid scheme is applicable to all activity sectors, excepting from the activities related to the production, processing and commercializing the products provisioned in the annex no. 3 to the Regulation regarding the state aid for SME.

### **The undertakings' eligibility**

**35.** Within the state aid scheme – *the Multi-annual Program for supporting the development of the small and medium sized enterprises by funds within the limit of the sums paid for the tax on the reinvested profit*, shall receive specific state aid allocations the SMEs. In this context, the Competition Council finds that these undertakings fulfill the following conditions:

- a) the undertakings are SMEs according to the provisions of art. 2 in the Regulation regarding the state aid for SME;



b) the undertakings ended the fiscal year previous to the present year with a positive balance sheet and totally or partly reinvested the realized.

### **The granting conditions for the state aid**

**36.** The forms and criteria for granting the state aid allocations within the state aid scheme the *Multi-annual Program for supporting the development of the small and medium sized enterprises by funds within the limit of the sums paid for the tax on the reinvested profit*, are those provisioned in the Regulation regarding the state aid for SME and in the Regulation regarding the regional state aid. *If allocations of state aid are granted for large investment projects, the provisions of the Multisectoral Regulation regarding regional state aid for large investment projects are to be applied.*

**37.** Within the *Multi-annual Program for supporting the development of the small and medium sized enterprises by funds within the limit of the sums paid for the tax on the reinvested profit*, the specific state aid allocations are granted only in relation with the initial investment, as defined in art. 5 align. (1) in the Regulation regarding the regional state aid.

**38.** The National Agency for SME and Cooperatives confirms that the maximum value of the funds a undertaking meeting the eligibility conditions can benefit from is given by the value of the tax related to the profit the undertaking invested.

**39.** Therefore, the undertaking benefiting from the specific state aid allocations within the notified scheme shall contribute to the funding of the investment 75%. The Competition Council found that the condition provisioned at art. 8 in the Regulation regarding the regional state aid is met, namely the beneficiary's contribution to the investment must be of at least 25% from its value. This way it is guaranteed a viable and efficient level of the initial investment benefiting of the specific state aid allocations within the scheme.

**40.** The intensity of the specific allocations within the state aid scheme, calculated by dividing them to the eligible costs, shall be at most 25%. Therefore there are met the legal provisions according to which the intensity shouldn't exceed the ceiling for the regional state aid with more than 15%

gross points, with the condition that the net intensity of the state aid doesn't exceed 75%.

**41.** The intensity ceilings are applied regardless the project is totally or partly financed from state sources or is partly financed by the European Union.

**42.** The granting of the state aid allocations within the notified scheme is conditioned by the maintenance of the investment for which the state aid was granted, for a minimum period of 5 years, meeting this way the provisions of art. 11 in the Regulation regarding the regional state aid.

### **THE RULE FOR CUMULATING THE STATE AIDS**

**43.** The maximum admitted ceiling for the state aid's intensity is applicable to the total of the state aid if the beneficiary receives state aids, in the same time, within more regional schemes, regardless the fact that the funds come from local, regional, national or communitarian sources.

**44.** The National Agency for SME and Cooperatives shall monitor the activity of the SME which will benefit of state aid allocations within the scheme - the *Multi-annual Program for supporting the development of the small and medium sized enterprises by funds within the limit of the sums paid for the tax on the reinvested profit*, pursuing that the granted state aid, cumulated with other state aids granted for the same objective within other schemes shouldn't exceed the maximum ceiling allowed for SMEs, respectively 65%.

### **CONCLUSIONS**

**45.** Provisions of the *GD no. 1461/2004 regarding the approval of the Program supporting the development of the SMEs with funds within the limit of the amounts paid for tax on reinvested profit* which are not in accordance with the provisions of the current decision, will be consequently amended.

**46.** Regarding the presented facts, the Competition Council finds that the state aid scheme - the *Multi-annual Program for supporting the development of the small and medium sized enterprises by funds within the limit of the sums paid for the tax on the reinvested profit*, is compatible with the normal

competitive environment and doesn't unduly affect the trade with the Member States of the European Union.

## **DECIDES**

**Art.1.** The financial measures granted based on the state aid scheme for small and medium sized enterprises- the *Multi-annual Program for supporting the development of the small and medium sized enterprises by funds within the limit of the sums paid for the tax on the reinvested profit*, is considered state aids and falls under the incidence of the Law no.143/1999 of the state aid, modified and completed by the Law no.603/2003.

**Art. 2.** In the basis of art.12 align.(2) letter.c) corroborated with art.14 align.(1) letter. b) in the Law no.143/1999 , with the subsequent modifications and completions it is authorized the state aid scheme for small and medium sized enterprises, with the condition of meeting the art. 3 and art. 4 in the present Decision.

**Art.3..** The undertakings benefiting from the state aid allocations within the scheme engage themselves to maintain the investment for a minimum period of 5 years. If not, the state aid shall be repaid.

**Art. 4.** The National Agency for SME and Cooperatives shall monitor that the specific aid allocations granted within the scheme will not exceed the maximum allowed intensity provisioned by the legal provisions in force, under the conditions of cumulating the state aids for the same objective and beneficiary.

**Art. 5.** According to the provisions of art. 24 in the Law no.143/1999 of the state aid, with the subsequent modifications and completions, the National Agency for SME and Cooperatives shall submit to the Competition Council information regarding the state aid scheme, for its inventorying and monitoring.

**Art.6.** 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.7.** The present Decision shall be communicated by the Secretariat-General of the Competition Council to:

- the National Agency for SME and Cooperatives, str. Poterasi nr. 11, sector 4, Bucuresti;

**Art.8.** 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**