

DECISION OF THE COMPETITION COUNCIL
No.319 dated 13.12.2004

regarding the state aid scheme for small and medium size enterprises –
The national program for the establishment and development of business
incubators in Romania

THE COMPETITION COUNCIL,

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

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

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

Taking into consideration the Regulation regarding the state aid for small and medium size enterprises,

Based on the following grounds:

PROCEDURE

1. By the address no. 683 on 12.11.2004 registered to the Competition Council with no. RS-AS 92/17.11.2004, the National Agency for SME and Cooperatives (from now on called ANIMMC), based on the Law no. 143/1999 of the state aid, with the subsequent modifications and completions, notified the state aid scheme – *The national program for the establishment and development of business incubators in Romania.*
2. The notification became effective at the date when the notification was registered at the Competition Council, namely on 17.11.2004.

DESCRIPTION OF THE STATE AID SCHEME

Objective

3. The state aid scheme aims the support of the SMEs through non-reimbursable financial allocations from the State.
4. The main objective of *The national program for the establishment and development of business incubators in Romania* is the development of the Sme field through the granting, by the State, of non-reimbursable financial allocations, 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

5. The legal base for granting the facilities is the Order of the President of ANIMMC no. 215/2004 *for the approval of the implementing procedure of The national program for the establishment and development of business incubators in Romania.*

Geographic coverage

6. The scheme applies to the SMEs on Romanian territory.

Field coverage

7. 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, namely agriculture, to the Regulation regarding the state aid for SME.

The undertakings' eligibility

8. Specific state aid allocations within the notified scheme can be granted only to the companies cumulatively 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. 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 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. The state aid allocations within the scheme can be granted to the small and medium size enterprises in relation with the consultancy services and other services and activities. According to art. 5 in the Regulation regarding the state aid for SME, consultancy services and other activities are compatible with the normal competitive environment only if there are fulfilled the following conditions:

- a) for the services provided by external advisors, the gross state aid shall not exceed 50% from the costs related to the performed services;
- b) these services are not a permanent or periodical activity and are not related to the expenses for the enterprise's normal activity, such as the common services for tax, legal consultancy or for advertising;

c) for the first participation to fairs and exhibitions, the gross state aid shall not exceed 50% from the supplementary costs resulting from the stand's lending, settlement and administration.

11. The state aid granted within the scheme is calculated as percentage points from either the costs related to the performed services or from the supplementary costs resulting from the stand's lending, settlement and administration. This amount is established based on the expenses for the consultancy services, other services and activities, in accordance with art. 5 in the Regulation regarding the state aid for SME.

12. The gross intensity of the state aid allocations shall not exceed 50% of the costs related to the performed services or 50% of the supplementary costs resulted from the stand's lending, settlement and administration.

The state aid forms and the granting criteria

13. The state aid allocations within the scheme will be granted under the form of non-reimbursable financial allocations from the State, within the limit of the budgetary allocations provisioned for each year in the ANIMMC's budget.

14. The potential beneficiary shall submit the request for funds' allocation, together with a number of justifying documents, to the ANIMMC.

15. For a newly established SME, the assessment of the request for fund allocation shall be made based on the following documents: request form, a developing project (business plan), identity card of the firm's administrator authorized to sign the request form/copy of the identity bulletin.

16. For a SME having an activity history of at least 2 years, the assessment of the request for fund allocation shall be made based on the following documents: request form, a developing project (business plan), identity card of the firm's administrator authorized to sign the request form/copy of the identity bulletin; copy of the registration certificate of the applicant or, after case, of the Registration Certificate, as well as a copy of the Fiscal Registration Certificate; Ascertainment Certificate issued by the Office of the Commerce Register near the court where the company has its business quarters; the balance sheet for the last two years; the own responsibility

statement regarding the average annual number of personnel from the fiscal year previous to the incubation; the applicant's fiscal record for the last 2 years.

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

- a) 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;
- b) the newly established SMEs must present a viable development project proving the creation of jobs;
- c) SMEs with an activity history of at least 2 years from the date when the documentation was submitted must have a viable development project allowing job creation, registering a positive financial – accountable balance sheet for the last 2 years and a registered average number of minimum 3 employees in the previous fiscal year.

The maximum amount of the state aid

18. The maximum amount provisioned to be granted annually, under the form of non-reimbursable financial allocations, to a SME within the state aid scheme is of ROL 300,000,000.

19. The intensity of the state aid granted as specific allocation within the state aid scheme - *The national program for the establishment and development of business incubators in Romania*, cannot exceed the ceiling for the state aid for SME for consultancy services and other services and activities, respectively 50% of the costs related to the performed services or 50% of the supplementary costs resulting from the stand's lending, settlement and administration.

The state aid scheme's budget

20. The maximum estimated state aid scheme's budget for the period 2004-2008 is of ROL 81.67 bill.¹, and are as it follows:

¹ The estimative calculation of the scheme's budget was made base don the price sat the level of 2004

Table 1 : The detailed situation of the maximum budget for the state aid scheme

	Bill. ROL				
year	2004	2005	2006	2007	2008
Budgetary allocations	10	15	16.8	18.81	21.06

The duration of applying the state aid scheme

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

22. The National Agency for SME and Cooperatives estimates that within the notified state aid scheme will benefit from the state aid specific allocations approx. 100 SMEs.

THE ASSESSMENT OF THE STATE AID SCHEME

Procedure

23. The state aid scheme for SMEs- *The national program for the establishment and development of business incubators in Romania* was notified to the Competition Council by the National Agency for SME and Cooperatives.

The state aid characteristic of the notified scheme

24. Within the notified scheme, the financial support is granted under the form of non-reimbursable funds established within the limit of the annual budget of the scheme. 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.

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

26. Therefore, the financial support measure granted in the basis of the scheme –*The national program for the establishment and development of business incubators in Romania* 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

27. The state aid allocations shall be given only to the SMEs cumulatively meeting the conditions presented at points 16,17 and 18 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 state aid for small and medium size enterprises.

Field coverage

28. From the notification it is clear that the state aid scheme is applicable to all activity sectors, except for the activities related to the production, processing and commercializing agricultural products as provisioned in the annex no. 3 to the Regulation regarding the state aid for SME.

The undertakings' eligibility

29. Within the state aid scheme – *The national program for the establishment and development of business incubators in Romania*, SMEs shall receive specific state aid allocations. In this context, the Competition Council notes that according to the scheme these undertakings have to 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 present before the granting of the state aid, a viable development project;
and
- d) for the SMEs with a activity record of at least 2 years from the date when the documents were submitted, they must register a positive financial –accountable balance sheet for the last 2 years and a average registered number of minimum 3 employees in the previous fiscal year.

The granting conditions for the state aid

30. In order to be considered compatible the forms and criteria for granting the state aid allocations within the state aid scheme *The national program for the establishment and development of business incubators in Romania*, have to comply with the criteria of the Regulation regarding the state aid for SME.

31. The state aid allocations within the scheme consist in non-reimbursable financing from the State, for the following:

- Consultancy during the pre- incubating period regarding the establishment of new undertakings;
- Consultancy and assistance in elaborating the business plans;
- Training in management ;
- Assistance for developing national and international partnerships;
- Assistance with the purpose of contracting certain complemntary financing for the incubated SMEs;
- Assistance granted for the incubated SMEs in correlating the activities with those of the undertakings existing in the area;
- Assistance for the purpose of contracting, by the incubated SMEs, of the consultancy services in the field of standardization systems, quality certification in accordance with the European Union's standards;
- Promoting the image of the company operating within the incubator by participating to fairs and exhibitions.

32. The Competition Council therefore concludes that the state aid allocations within the scheme are granted in relation with the services performed by external specialists or used for the participation to fairs and exhibitions.

33. The objective of the *national program for the establishment and development of business incubators in Romania* thus are specific state aid

allocations granted solely in relation with the consultancy services and other activities which have to comply with the conditions set out in Art. 5 of the Regulation regarding the state aid for SMEs.

34. Thus according to art.5 the gross intensity of the specific state aid allocations, calculated related to the eligible costs within the scheme shouldn't exceed the ceiling of 50%.

35. In view of the information provided it can be concluded that this criterion is fulfilled by the scheme.

36. Furthermore, art.5 foresees that aid for an SME's first participation to a fair or exhibition may not exceed 50% form the supplementary costs resulting from the stand's lending, settlement and administration.

37. The Competition Council notes that the provisions of the scheme show that also this requirement is met.

38. The National Agency for SME and Cooperatives further confirmed that the maximum annual amount of funds that an undertaking can benefit from if fulfilling these conditions, may not exceed of ROL 300,000,000.

THE RULE FOR CUMULATING THE STATE AIDS

39. Art. 8 of the Regulation regarding the state aid for SMEs requires that The maximum admitted ceiling for the state aid's intensity is applicable to the total of the state aid even 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.

40. It is noted that according to the scheme the intensity ceilings are applicable regardless the fact that the project is completely or partially financed from State sources or is partly financed by the European Union as required by Art.8. The scheme therefore complies with this condition and cumulatively may not exceed the ceiling of 50% as foreseen by the scheme.

MONITORING

41. The scheme states that 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 national program for the establishment and development of business incubators in Romania*, 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 50%.

CONCLUSIONS

42. Related to the presented facts, the Competition Council finds that the state aid scheme - *The national program for the establishment and development of business incubators in Romania*, 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 measure granted based on the state aid scheme for small and medium sized enterprises- *The national program for the establishment and development of business incubators in Romania*, is considered state aid 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 from the present Decision.

Art. 3. 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. 4. 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. 5. 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. 6. 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.

Mihai Berinde
President