

DECISION
no. 320 as of 14.12.2003
regarding the state aid to be granted to
S.C. PARCUL INDUSTRIAL CUGIR S.A.,
notified by the
MINISTRY OF ADMINISTRATION AND INTERNAL AFFAIRS

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, modified and completed by Order no. 221/2004, published in the Official Gazette, Part I no. 847 as of September 16, 2004.

On the following grounds:

1. DESCRIPTION OF THE LEGAL FRAMEWORK

1.1. LEGAL BASIS FOR GRANTING GRANT OF THE STATE AID

(1) The State aid is granted to S.C. PARCUL INDUSTRIAL CUGIR S.A (“limited company”) as part of the state aid scheme provided for under Article 7 of the Government Ordinance no. 65/2001 regarding the setup and functioning of industrial parks and Article 24 (13), 250 (1) point 9 and Article 257 (1) point 1 of the Law no. 571/2003 regarding the Fiscal Code.

1.2. THE NOTIFICATION PROCEDURE

(2) By note no. 19.628/22.11.2004, registered at the Competition Council by no. RS-AS 93/23.11.2004, the Ministry of Administration and Internal Affairs notified, on the basis of Article 6 and Article 14 (1) f) of the Law no. 143/1999 on State aid, with subsequent modifications and completions, henceforth referred to as “the law”, the specific allocation for S.C. PARCUL INDUSTRIAL CUGIR S.A.

(3) By note no. DAAS/963/24.11.2004 supplementary information was requested to complete the notification form. Ministry of Administration and Internal Affairs has sent the requested information by note no. 239/26.11.2004, registered with the Competition Council no. DAAS/985/26.11.2004.

(4) The notification became effective on the date when all information was precise and complete, namely on 26.11.2004.

2. THE BENEFICIARY OF THE STATE AID MEASURES

(5) Considering the opportunities linked to the availability of a highly skilled workforce, laid due to the restructuring of S.C. Uzina Mecanica Cugir, the Alba County Council decided to set up and develop “Parcul Industrial Cugir”.

(6) Parcul Industrial Cugir is located in the North part of Cugir town, bordering to the north and south with S.C. Uzina Mecanica Cugir S.A., to the west with S.C. Uzina Mecanica Cugir S.A and S.C. Star Transission and to the east with Cugir-Sibot railway.

(7) From the interpretation of the Government Ordinance no. 65/2001 provisions on the setup and functioning of industrial parks, it comes out that the beneficiary of the state aid scheme may be the association owning the title of industrial park or other undertakings which own the land inside the park area and which commit themselves to carry out the activities for which the facilities provided for under Article 7 of the Government Ordinance are granted.

(8) In the case assessed, the beneficiary of the financial measures granted by the state is S.C. PARCUL INDUSTRIAL CUGIR S.A. as the management company of the PARCUL INDUSTRIAL CUGIR.

(9) S.C. PARCUL INDUSTRIAL CUGIR S.A is registered in the Trade Register by no. J-01/473/2002, unique identification number R14963620. The shareholders equity is in amount of ROL 6,608,720,170 entirely held by the Local County of Alba.

(10) The land corresponding to the industrial park, with a surface of 11.17 ha., is on the administrative territory of Cugir being in the private ownership of Alba county and has been made available to S.C. PARCUL INDUSTRIAL CUGIR S.A. in order to perform the services they committed to under the Government title. On the land there are buildings resulting from taking over a part of S.C. CUGIR S.A. patrimony; at present the land is free of any obligations. The life period of the industrial park is of at least 30 years.

(11) The company was set up in October 2002 and did not carry out economic activities up to now, having 16 employees according to its organisational flowchart falling under SME criteria.

(12) The main field of activity of S.C. PARCUL INDUSTRIAL CUGIR S.A is represented by the management of „real estate based on tariffs or agreement” (management of Parcul Industrial Cugir).

(13) The fields of specialization of the park are the following:

- Mechanical processing;
- Wood processing
- Metallic works;
- Machine tools manufacturing;
- Light industry (furniture upholstery, office furniture);
- Food processing industry (harvesting and preservation of forest fruits);
- Electrical installations works;
- Design, technical assistance and bookkeeping.

(14) S.C. PARCUL INDUSTRIAL CUGIR S.A is located in the “Central Development Region”. The Ministry of Administration and Internal Affairs mentions that Center Development Region, including Alba county, there are more industrial parks (Sebes-Alba, Vidrasau, Selimbar, Sibiu Sura Mica, Zarnesti, Carfil-Brasov, Metrom-Brasov) in different stages (planning, construction, operation).

3. OBJECTIVES FOR THE ESTABLISHMENT OF S.C. PARCUL INDUSTRIAL CUGIR S.A

(15) In order to upgrade the structure of the local and regional industries, the establishment of S.C. PARCUL INDUSTRIAL CUGIR S.A has as objective to generate a proper business environment for the SMEs capable to take advantage of the material, energy and labor resources available locally.

(16) The necessity for creating such an economic development entity in the town of Cugir is beyond question due even to the fact that by the restructuring of S.C. Uzina Mecanica Cugir S.A. 15,000 people were laid off. The stated purpose refers also to an alternative on the

labor market by stimulating the setting up of small enterprises and of developing the existing ones in order to create more new jobs.

(17) Parcul Industrial Cugir, by creating attractive terms to carry out business, will attract investors thus contributing to the increase of investments in the area.

4.THE FINANCIAL SUPPORT MEASURES GRANTED TO S.C. PARCUL INDUSTRIAL CUGIR S.A.

(18) Government Ordinance no. 65/2001 regulates the regime of setting up and functioning of industrial parks. According to the provisions of Article 1 (2) of this ordinance, “The industrial park represents a delimited area in which are carried out economic, scientific research, and/or technological development activities, in the view to value the human resources and material potential of the area.

(19) The establishment of an industrial park is based on an ‘association in participation’ between authorities of the public, central and local administration, enterprises, research and development institutes and/or other interested partners.

(20) The industrial park is administered by a company setup according to the provisions of the Law no. 31/1990 on companies, republished, with subsequent modifications; the shareholders may be the associates who set up the industrial park. No undertaking which is a shareholder, which uses the utilities and/or infrastructure of the industrial park may control the management company.

(21) According to the provisions of Article 12 of the Government Ordinance no. 65/2001, industrial parks may be set up by Government decisions, on industrial platforms land. According to Article 8 of the Ordinance, „operating of industrial parks is achieved by commercial contracts concluded between the management company and Romanian legal persons or subsidiaries/agencies of foreign companies respectively, which may carry out business specific to the industrial parks”.

(22) The management company - S.C. PARCUL INDUSTRIAL CUGIR S.A. – benefits from the following fiscal facilities:

- according to Article 24 (13) of the Law no. 571/2003 on the Fiscal Code, for the investments made in the industrial parks until 31.12.2006, a supplementary deduction of the taxable profit is granted, which is 20% of the value of the investments in buildings or building rehabilitation, internal infrastructure and the connexion to the public utilities network, taking into account the legal provisions in force concerning the classification and normal durations of using the depreciable fixed assets.

- tax reductions granted by the local public administration based on decisions of the local or county councils on whose territory the industrial park lies, for the imovable assets and lands transmitted for use to the industrial park;

Value of facility	= ROL 17,734,000 thou.*3% = = ROL 532,020 thou.
The year 2006:	
Value of buildings and special constructions	= ROL 28,734,000 thou.
Reduction of tax	= by 3%
Value of facility	= ROL 28,734,000 thou.*3% = = ROL 862,020 thou
The year 2007:	
Value of buildings and special constructions	= ROL 30,934,000 thou.
Reduction of tax	=by 3%
Value of facility	= ROL 30,934,000 thou*3% = = ROL 928,020 thou
TOTAL FACILITY	ROL 532,020 thou.+ROL 862,020 thou.+ ROL 928,020 thou. === ROL 2,322,060thou.

(25) In total, facilities from which S.C. PARCUL INDUSTRIAL CUGIR S.A. can benefit amount to ROL 6,221,060 thou., broken down annually below:

Year 2005	ROL 2,183,020 thou.
Year 2006	ROL 2,934,020 thou.
Year 2007	ROL 1,104,020 thou.
TOTAL FACILITIES	ROL 6,221,060 thou.

5.THE STATE AID CHARACTER OF THE FINANCIAL SUPPORT MEASURES GRANTED TO S.C. PARCUL INDUSTRIAL CUGIR S.A.

(26) The measures of financial support intended to be granted to S.C. PARCUL INDUSTRIAL CUGIR S.A. can give the company an advantage over its competitors and could thus distort competition. The financial measures would therefore constitute State aid within the meaning of Article 2 of Law no. 143/1999 on State aid, modified and completed by Law no. 603/2003 and the Competition Council would have to analyse their compatibility with a normal competitive environment.

(27) The facilities from which S.C. PARCUL INDUSTRIAL CUGIR S.A. may benefit are: tax reductions granted by the local public administration based on decisions of the local or county councils on whose territory the industrial park lies, for the tangible assets and lands transmitted for use to the industrial park, supplementary reductions of the taxable profit of 20% of the value of the investments in buildings or building rehabilitation, internal infrastructure and connection to the public utilities network (for the investments made until 31.12.2006), exemptions from the tax on land and buildings, other facilities that may be granted by the local public administration, with the observance of the law.

(28) Analyzing the financial support measures, the Competition Council found out that there is no doubt that these measures are financed from state resources, are selective conferring an advantage to S.C. PARCUL INDUSTRIAL CUGIR S.A. In addition, there is no doubt that these financial measures affect trade with the Member States of the European Union.

(29) In conclusion, the financial support measures are considered state aid and fall within the scope of Law no. 143/1999 on State aid, modified and completed by Law no. 603/2003.

(30) The purpose of setting up the Industrial Park from Cugir is to incentivize the economic regional and local development, by attracting companies able to carry out production activities generating goods with a high level of added value. The state aid is granted in connection with the initial investment in the view to overcome some regional disadvantages for ensuring the development of the 'Central Development Region'.

(31) In conclusion, the state aid must be assessed according to the granting criteria of state aid provided under the Regulation on regional state aid.

6. ASSESSMENT OF STATE AID MEASURES INTENDED TO BE GRANTED TO S.C. PARCUL INDUSTRIAL CUGIR S.A.

6.1. Assessment of state aid according to the criteria regarding the regional state aid

(32) According to Article 14 paragraph 1 (f) of Law no. 143/1999 with the subsequent modifications and completions, the Competition Council can authorize measures that are State aids according to the Regulation on aid for regional development. For the purpose of this Regulation, aid can be granted for initial investment (Chapter II) or the creation of jobs (Chapter III). In exceptional this also applies to operating aid (Chapter IV).

6.1.1 Aid for the initial investment

(33) The aid in question can be qualified as aid for initial investment in the sense of Chapter II of the Regulation regarding regional aid.

(34) According to art.5 - (1) of the Regulation, initial investment means an investment in **fixed capital** relating to the setting-up of a new establishment, the extension of an existing establishment, or the starting-up of an activity involving a fundamental change in the product or production process of an existing establishment through rationalization, diversification or modernization.

(35) In the analyzed case, the investments will be carried out after issuing a decision by the Competition Council. The investment program comprises the rehabilitation of the existing utilities network and also their extension by setting up of a new infrastructure absolutely necessary for the operation of the industrial park. The state aid will be focused on an investment in tangible assets for the extension of an existing unit.

(36) According to the feasibility study attached to the notification form, the investments to be made within the S.C. PARCUL INDUSTRIAL CUGIR S.A. shall be finalized in 2007 and shall consist of the basic infrastructure comprising necessary utilities: electricity supply, water supply, sewage system, roads – available for potential undertakings that could set up appropriate production and service premises.

(37) Through the creation of the industrial park, the access of the undertakings operating

within its area to the infrastructure they need in their economic activity is allowed.

(38) The general project estimate amounts at ROL 27,276,000,000 divided as such:

Expenses for environmental protection(green areas)	ROL	1,500,000,000
Expenses for electricity supply network	ROL	5,000,000,000
Expenses for natural gases supply network	ROL	3,000,000,000
Expenses for water supply network	ROL	5,000,000,000
Expenses for canalization network	ROL	2,000,000,000
Telecommunications network	ROL	1,000,000,000
Connection roads	ROL	3,000,000,000
Surroundings	ROL	2,000,000,000
External lighting	ROL	1,000,000,000
Designing and technical consultancy	ROL	1,000,000,000
PSI rigging	ROL	500,000,000
Organising the working site	ROL	700,000,000
ISC quota and CSC commission	ROL	326,000,000
Others and unplanned	ROL	1,250,000,000

TOTAL PROJECT BUDGET **ROL 27,276,000,000**

(39) Thus, the state aid finances the initial investment for the extension of an existing unit and observing the conditions of art. 5 of the Regulation on the regional state aid for being considered a state aid for initial investment.

(40) The purpose of the state aid is neither the replacement of investments for preserving the production capacity, nor the financial restructuring of a company in difficulty. Thus, the provisions of art. 5 align. (2) letter a) from the Regulation on regional state aid referring to the replacement of investment for preserving the production capacity and of the art. 5 align. (2) letter b) regarding the measures for the financial restructuring of a firm in difficulty are observed.

(41) Granting the state aid confers an official recognition to the technical and financial project drafted by the applicant, supports its investment efforts, and also determines the decision to invest in the park by other undertakings.

(42) Thus, setting up the S.C. Parcul Industrial Cugir S.A.will lead to the following effects:

- the creation of attractive conditions to perform economic activities, in efficiency conditions, by organizing the land of the industrial park and connecting it to the utility network;
- the increase of Romanian and foreign investment level;
- the development of economic activities which may trigger highly qualified personnel especially;
- the new jobs creation consistent with the evolution of Internal and international markets.

(43) It is expected that 30 new companies will operate in the Industrial Park with the creation of at least 980 new jobs in the area.

(44) The Feasibility Study attached to the notification form estimates the turnover and the gross profit of the beneficiary in the first 3 years of functioning, as follows:

Table no. 1

	Turnover (ROL)	Gross Profit (ROL)
Year 2005	7,000,000,000	1,500,000,000
Year 2006	7,200,000,000	1,600,000,000
Year 2007	8,000,000,000	2,000,000,000

Source: SC PARCUL INDUSTRIAL CUGIR SA

(45) The calculation of a series of economical and financial ratios such as actual liquidities (values between 100.9% and 135.8%), general liquidities (with values between 1.64 and 1.69), gross margin (approximately 0.25), reflects the fact that the beneficiary's activity is profitable and that the investment is able to financially self-sustain.

(46) Given the above, one can conclude that the achievement of this industrial park will significantly contribute to the local development of both the city of Cugir, and of the adjacent region thereof, through a major economic and business concentration. The concentration of several economic activities in a certain area, while developing local material and human resources, does not distort the competitive environment, but on the contrary, it is encouraged by it.

6.1.2 Eligible costs

(47) In the present situation, the rules on eligible costs for tangible investments are being applied.

(48) According to Article 6 (1) of the Regulation on regional aid, aid for initial investment is calculated as a percentage of the investment's value. Paragraph (2) of the same article stipulates that this value is to be established on the basis of a uniform set of items of expenditure corresponding to the elements of the investment, namely land, buildings and equipment which represents the standard base defined in the Annex 2 of the Regulation on regional aid.

(49) In case of a purchase, only the costs of buying the three asset elements from the standard base should be taken into consideration, provided that the transaction is taking place under market conditions. Assets for whose acquisition aid has already been granted prior to the purchase should be deducted.

(50) When a purchase is accompanied by another initial investment, the expenditure relating to the latter should be added to the cost of the purchase.

(51) For the calculation of eligible costs, out of the total value of the investment project (ROL 27,276,000,000) have been deducted the expenditure for the environmental protection (green areas), expenditure for designing and technical consultancy (commissions, others). Only eligible costs for the extension of the existing infrastructure have been taken into

account, which are absolutely necessary for the well-functioning of the industrial park. Thus, the following are eligible costs:

Table no. 2 – Eligible costs of the investment project

	Eligible costs/expenditure (ROL)
Expenditure for the necessary utilities, from which:	20,000,000,000
Expenses for electricity supply network	5,000,000,000
Expenses for natural gases supply network	3,000,000,000
Expenses for water supply network	5,000,000,000
Expenses for sewage network	2,000,000,000
Expenses for telecommunications network	1,000,000,000
Expenses for roads	3,000,000,000
Expenses for external lighting	1,000,000,000
b) Expenses with the preparation of the site, from which:	2,000,000,000
Surroundings	2,000,000,000
Total eligible costs (a+b)	22,000,000,000

Source: SC PARCUL INDUSTRIAL CUGIR SA

(52). The total value of eligible costs is ROL 22,000,000,000 and it stands for tangible investments necessary for the infrastructure of the industrial park (land, buildings and equipment which form the standard basis), thus the condition under Article 6 of the Regulation on regional state aid is complied.

6.1.3. Contribution of the beneficiary

(53). To ensure a viable and efficient initial investment benefiting from aid, the recipient's contribution to its financing must be at least 25%, (Art. 8 - (1) of the Regulation on regional state aid). This minimum contribution of 25% must not contain any state aid (Article 8 para. (2) of the same Regulation).

(54). The state aid beneficiary shall contribute to the achievement of this investment project, in the form of investment in tangible assets for the extension of the existing network, in the amount of ROL 15,778,940,000 standing for 71.7% of the total eligible costs (ROL 22,000,000,000). This value is higher than the 25% imposed by Article 8 of the Regulation on the regional state aid.

6.1.4. Aid intensity

(55). According to Article 9 of the Regulation on regional aid, the gross intensity of regional aid must not exceed 50% of the Net Grant Equivalent. At present, Romania's whole territory is considered an area identical to those areas of the European Community which are earmarked by the provisions of art. 87 (3) from the Treaty regarding the Institution of the European Community as being eligible for regional aid granting with a maximum intensity of 50%.

(56). The value of the aid is ROL 6,221,060,000 of the total eligible costs of the project, amounting at ROL 22,000,000,000. Our calculations show an intensity of 28.3 %. In consequence, Article 9 of the Regulation on regional state aid is observed, which provides that the gross aid intensity for regional aid should not exceed 50%.

6.1.5. Maintaining the investment

(57). According to Article 11 of the regulation on Regional aid, the aid for initial investment must be conditioned, through its method of payment or through the conditions associated with its acquisition, by maintaining the investment in question for a minimum period of five years.

(58) As mentioned in paragraph (36), the investments will be finished within 36 months after the decision of the Competition Council is issued.

(59) The investments achieved in view of setting up the Industrial Park Cugir shall be maintained throughout the existence of the park, which is of 30 years, and thus the condition under Article 11 from the Regulation on regional aid of maintaining the investment for at least 5 years is observed.

(60) The Competition Council notes that the authorization of the state aid for S.C. Parcul Industrial Cugir S.A. will be conditional on maintaining the investment for at least 5 years.

6.2 THE AID CUMULATION RULE

(61) The aid intensity ceilings laid down in Article 9 and Article 10 of the Regulation on Regional Aid apply to the total aid where assistance is granted concurrently under several regional schemes regardless of whether the aid comes from local, regional, national or Community sources.

(62) The investment aid provided under Chapter II from the Regulation on Regional Aid the job creation aid described in Chapter III may be cumulated, subject to the intensity ceiling laid down for the subjected region in the Regional Aid Map for Romania.

(63) This condition is deemed to be met if the sum of the aid for initial investment, expressed as a percentage of the investment, and of the job creation aid, expressed as a percentage of wage costs, does not exceed the most favorable amount resulting from application of either the ceiling set for the region in accordance with the criteria indicated in under Articles 9 and 10, or the ceiling set for the region in accordance with the criteria indicated in percentage provided under Article 13.

(64) The most favorable amount resulting from the Application of Article 9 of the Regulation is 50 %.

(65) The Ministry for Administration and Internal Affairs shall monitor the activity of S.C. PARCUL INDUSTRIAL CUGIR, seeking that the state aid granted, cumulated with the state

aids granted for the same objective within other schemes, should not exceed the maximum admissible intensity of 50% provided for under the Regulation on regional state aid.

(66) S.C. PARCUL INDUSTRIAL CUGIR S.A. has not benefited from other state aids until the present time. The rules on the cumulation of aid are thus observed.

7. CONCLUSIONS

(67) The information presented in the notification before the Competition Council lead to the conclusion that the state aid intended to be awarded to S.C. PARCUL INDUSTRIAL CUGIR S.A 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.

(68) The analysis shows that the state aid amounting ROL 6,221,060,000 and consisting in payment facilities granted under the provisions of Article 24 par. 13, Article 250 par. 1, and of Article 257 par. 1 of Law 571/2003 on the Fiscal Code, meets the award criteria under the Regulation on regional state aid, enacted by Order of the President of the Competition Council 55/2004.

DECIDES

Art. 1. The measure notified by the Ministry for Administration and Internal Affairs for the recipient S.C. PARCUL INDUSTRIAL CUGIR S.A. constitutes state aid for the purposes of Article 2 of Law 143/1999, amended and completed by Law 603/2003 and by G.O. 94/2004 on regulation of financial measures.

Art. 2. Under article 12 par. 2 section (c), combined with Article 14 par. 1 section (f) of Law 143/1999, with subsequent amendments and completions, we authorize the state aid for regional development which is about to be granted to S.C. PARCUL INDUSTRIAL CUGIR S.A, provided that the conditions under Articles 3 and 4 of this decision are met.

Art. 3. The company commits itself to maintain the investment at issue for a period of minimum five years. If this is not upheld the aid will be recovered according to the law.

Art. 4. The Ministry for Administration and Internal Affairs shall monitor that the intensity of the aid granted to S.C. PARCUL INDUSTRIAL CUGIR S.A. must commit itself not to exceed the maximum admitted by the regulations in force, provided that the conditions for state aid cumulation for the same objective and recipient are observed.

Art. 5. The maximum value of the state aid S.C. PARCUL INDUSTRIAL CUGIR S.A may benefit from is ROL 6,221,060,000.

Art. 6. This Decision is applicable as of the date it is communicated.

Art. 7. Under Article 24 of Law 143/1999, with subsequent modifications and completions, the Ministry for Administration and Internal Affairs shall convey to the Competition Council

information on the granted state aid, in order to make their inventory and to monitor them.

Art. 8. According to the provisions of Article 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, Administrative Section, within 30 days from the publication, or depending on the case, from the date it was communicated by administrative procedure.

Art. 9. The present Decision shall be communicated by the Secretariat-General of the Competition Council to:

- the Ministry for Administration and Internal Affairs, 1, Piata Victoriei, sector 1, Bucharest;
- S.C. PARCUL INDUSTRIAL CUGIR S.A., localitatea Cugir, judetul Alba.

Art. 10. 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