

**Decision of the Competition Council**  
**no. 137/25.07.2005**

**concerning the notification of the Authority for State Assets Capitalization**  
**regarding the financial support in favor of**  
**S.C. AMITECH DUCTILE S.R.L. Calan**

**THE COMPETITION COUNCIL,**

Taking into account the provisions of European Agreement establishing an association between Romania, and European Communities on one side and the Member States of those, on the other side, approved by Law no. 20/1993, published in Official Journal of Romania, Part I, no. 73 on 12 April 1993,

Based on the provisions of Competition Law no. 21/1996, published in Official Journal of Romania, Part I, no. 88 on 30 April 1996, with subsequent amendments and completions,

Based on the provisions of Law no. 143/1999 on state aid published in the Official Journal of Romania, Part I, no. 370 on 3<sup>rd</sup> August 1999, with subsequent amendments and completions,

Having regard the provisions of the Regulation regarding the investigation procedure in the State aid field, published in Official Journal of Romania, Part I, no. 257 on 28<sup>th</sup> of March 2005;

Having regard the provisions of the Regulation on regional State aid, published in Official Journal of Romania, Part I, no. 340 on 19<sup>th</sup> of April 2004, with subsequent amendments and completions,

Based on the provisions of the Decree no. 57/2004 for the appointment of the Competition Council members,

The Report drafted by the rapporteur and the investigation team following the findings during the investigation opened through the Order of the Competition Council's President no. 103/03.06.2005,

**Based on the following,**

**I. PROCEDURE**

(1) By address no. 6595/18.03.2005, registered at Competition Council with no. RS-AS 9/23.03.2005 the State Assets Capitalization Authority (AVAS) has notified an individual aid for S.C. Amitech Ductile S.R.L. Calan, having as objective the regional development, on the basis of art. 6 of the *Law no. 143/1999 on State aid* amended and completed by *Law no. 603/2003* and *G.O. no. 94/2004 regarding some financial measures*.

(2) The Competition Council has requested supplementary information from AVAS by address no. CC/451/04.04.2005, which were furnished by address no. VP4/390/04.04.2005 registered at Competition Council with no. RG/2269/05.04.2005.

(3) Also, during the analysis of the notification, the Competition Council has requested clarifications by address no. DAAS/09.05.2005. To this request AVAS has responded by address no. VP4/1233/25.05.2005.

(4) On 03.06.2005, by the Note of the State Aid Authorization Department, registered with no. DAAS/513/03.06.2005, the Competition Council initiated the formal investigation procedure. By address no. CC/840/06.06.2005 the Competition Council has informed the supplier of opening the investigation procedure, requesting in the same time some further information.

(5) By address no. VP4/1399/23.06.2005 registered with no. RG/4381/23.06.2005, AVAS has answered that the Note for opening investigation contains no confidential data. It also responded to the information request.

(6) As a consequence, the opening investigation Order and the note related to it were published on the Competition Council's site, according to the provisions of Law no. 143/1999 on state aid, with subsequent amendments and completions and of Regulation regarding the investigation procedure in the State aid field, giving the interested parties the opportunity to send their comments, in the legal term of 15 days from the publication.

(7) The Competition Council has received no comments whatsoever, neither from AVAS, the beneficiary or other interested party.

## **II. Legal basis of the support measure**

(8) The legal basis for granting the financial support is the Emergency Government Ordinance no. 3/2004 regarding finalizing the investment "Ironwork for pressure tubes on ductile iron" on the Sidermet Calan platform, approved by Law no. 162/2004, published in the Official Gazette of Romania no. 174/01.03.2004.

(9) According to E.G.O. no. 3/2004, AVAS intends to sell to Amitech the Ironwork at a price under the market value, with the possibility to pay it in several installments, on non-commercial terms i.e. no interest (see paragraph. 23)

### **II.1. The beneficiary - S.C. AMITECH DUCTILE S.R.L. CALAN**

(10) S.C. Amitech Ductile S.R.L. Calan is a large newly established company, which has been set up on 17.06.2004 and owned 100% by Pipe Products GmbH Germany. Later, Pipe Products GmbH Germany has been acquired by AMIANTIT Arabia Saudita.

(11) At present, S.C. Amitech Ductile S.R.L. is not producing anything yet. The main activity, as registered at the Trade Office is the production of cast iron tubes (pipes), code CAEN 2721. In order to carry out its activity, S.C. Amitech Ductile S.R.L. intends to

enter the ductile iron tubes (pipes) market. We mention that ductile cast iron is a subcategory of the cast iron tubes.

(12) Thus, S.C. Amitech Ductile S.R.L. intends to buy the assets relating to a pressure tubes Ironwork (*Ironwork*<sup>\*</sup>) and other equipments from the Authority for Bank Assets Capitalization (AVAB), being about to conclude the sell-purchase contract for the Ironwork.

(13) According to the notification, in the context of this contract, Pipe Products GmbH Germany takes over the following obligations:

- To finalize the investment in a period of 1 year from taking over the goods;
- To maintain the investment in functioning for a period of 5 years;
- To maintain the 600 employees for a period of 5 years;
- To insure the goods purchased, for the whole payment period of the price, declaring AVAS as the beneficiary of the insurance policy.

## **II. 2. Relevant market on which the beneficiary shall be acting**

(14) According to the notification, the production of the Ironwork will create a new competitor on the tubes market. The ductile cast iron tubes shall compete with the ones on polypropylene, PVC and GRP (polyesters armed with glass purls).

(15) The products that S.C. Amitech Ductile S.R.L. intend to offer are the following:

- pig iron of different qualities;
- ductile cast iron tubes;
- ductile iron fittings and accessories.

(16) From the point of view of the product trading, the company intends to sell them both on the domestic market, as well as on the external market - Europe and Northern Africa (especially Algeria).

(17) According to the data presented by AVAS in the notification form, in Romania, the companies producing tubes are the following:

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<sup>\*</sup> The Ironwork was owned initially by two foreign companies, i.e. German and American. In 1998, S.C. Sidermet S.A., a domestic cast iron producer concluded a sell-purchase contract for the Ironwork with these companies. As the payment was guaranteed by the State and Sidermet did not pay the entire price for it, the Ironwork was distrained by AVAS (as the authority empowered by the State to capitalize the assets). The several tentatives of AVAS, to recover the loss, failed; the assets are at present in the property of AVAS. Also, we mention that, according to the notification, SIDERMET is during the liquidation procedure.

**Table no. 1 The situation of the tubes producers on the internal market**

No.	Company	Tube type	Capacity (tones/year)
1	Mechanical Plant Orastie	Ductile cast iron	40,000
2	Palplast Sibiu	Polyethylene	4,000
3	Valrom Bucuresti	Polyethylene and PVC	7,000
4	Pipe Life Miercurea Ciuc	Polyethylene and PVC	10,000
5	Terraplast Bistrita	Polyethylene and PVC	8,000
6	Rehau Sibiu	Polyethylene and PVC	5,000
7	Hobas Bucharest	GRP	4,000
8	Others(5-6 producers)	Polyethylene and PVC	5,000

*Source: AVAS notification form*

(18) On the external market, the competitors are the following:

**Table no. 2 The situation of tubes producers on the external market**

No.	Competitor	Location	Capacity (tones/year)
1	St. Gobain	Plant all over the word	1,300,000
2	Electrosteel	India	200,000
3	XinXing	China	700,000
4	Buderus	Germany	100,000
5	Sertubi	Italy	80,000
6	SADIP	Saudi Arabia	140,000
7	US Pipe	USA	300,000
8	ACIPCO	USA	300,000

*Source: AVAS notification form*

The market shares of the most important competitors on the external market are: St. Gobain – 24%, XinXing – 13%, Electrosteel – 4%.

### **II. 3. Description of the support measure**

(19) According to art. 3 from the E.G.O. no. 3/2004, the equipments related to the Ironwork will be sold by direct negotiation to S.C. AMITECH DUCTILE S.R.L. Calan.

(20) For this purpose, an independent expert Darian Rom Suisse carried out an evaluation of these equipments.

(21) According to the same normative act, AVAS is going to sell the Ironwork at a price lower than the value established by the expert.

(22) The price shall be paid in 12 yearly installments, with no payment in advance.

(23) AVAS has notified two financial support measures, in total amount of USD 6,636,073, as follows:

1. the difference between the assessed value (market price) of the Ironwork (USD 14,594,000) and the minimum selling price of these equipments (USD 9,486,100). It results a difference of USD 5,107,900, which represents 35% of the assessed value.
2. the facility to pay the price for the Ironwork in 12 installments is considered as a preferential loan (i.e. no interest is paid). The aid is represented by the present value of the interest which would have been paid if the loan was contracted under market conditions and has been calculated by AVAS in the amount of USD 1,528,173.

### **III. Reasons for opening the investigation**

(24) The investigation was opened by the Order of the Competition Council' President no. 103/03.06.2005 based on art. 8(4) of Law no. 143/1999 on state aid, with subsequent amendments and completions, in order to analyze the compatibility of the support measures intended to be granted to S.C. Amitech Ductile S.R.L. Calan, with the provisions of the Law and the regulations issued for its application.

(25) According to the information from the notification, S.C. Amitech S.R.L. Calan intends to produce ductile iron tubes, AVAS arguing that these products are not steel products.

(26) Contrary to the opinion of AVAS, of the Competition Council considers that the products that Amitech intends to offer on the market correspond to code CN 7303, being obviously steel products, as defined in Annex no. 1 of the Regulation on regional State aid for large investment projects, with subsequent amendments and completions.

(27) Therefore, any support measure that is intended to be granted to Amitech Ductile must observe the special rules for the steel sector.

(28) As mentioned in the Note for opening the investigation, the Competition Council has expressed its doubts about the eligibility of this firm to receive State aid for investments in this sector.

### **IV. Comments form third parties, beneficiary and AVAS**

(29) The Competition Council has not received any comment, neither from interested parties and neither from beneficiary or AVAS within the leagl term of 15 days from the publication of the Order and the Note for opening the investigation.

## **V. Evaluation of the financial support measures which AVAS intends to grant to S.C. AMITECH DUCTILE S.R.L. CALAN**

### **V.1. Observing the stand still clause**

(30) AVAS has complied with the procedural requirements of Art. 6 and 7 of Law no. 143/1999 on State aid, with subsequent amendments and completions, by notifying the above mentioned measure before putting it into effect.

### **V.2. State aid character of the financial support measures which AVAS intends to grant to the company**

(31) In order to be considered as State aid in the meaning of the Law no. 143/1999 on State aid, with subsequent amendments and completions, the financial support must cumulatively fulfill the four conditions provided for in art. 2, as follows:

- To be granted by the State or from State resources;
- To be selective,
- To provide an economic advantage,
- To distort or to threaten to distort the competition or the trade between Romania and Member States of the European Union.

#### **V.2.1. State aid granted from State resources**

(32) First of all, the advantage must be granted from State resources. According to art. 2(8) of the Law no. 143/1999 on State aid, with subsequent amendments and completions, selling goods/assets, which are owned by the State (represented by AVAS – as shareholder), under the market price, implies forgoing present revenues.

(33) Also, the possibility to pay the price in several installments, over a period of 12 years, can be considered as a preferential loan granted by AVAS, as no interest is paid by S.C. Amitech S.R.L. Calan. Such a loan could not be contracted under normal market conditions; therefore, granting this aid means forgoing future revenues.

(34) As AVAS represents a State body and its activities are clearly classed as State activities, therefore both support measures are granted by the State, from State resources.

#### **V.2.2. Selectivity**

(35) Secondly, the financial support must be selective favouring certain undertakings or the production of certain goods. The E.G.O. no. 3/2004 provides that the Ironwork will be sold to a single company, having as only shareholder Pipe Products. Thus, the support measure is, undoubtedly a selective measure.

### **V.2.3. Advantage**

(37) The third condition to be fulfilled is that the financial support measure must provide the beneficiary with an advantage. From the information sent by AVAS in the notification form, the Competition Council notes that, the selling price of the Ironwork (USD 9,486,100) is lower with 35% than the assessed value by the independent expert (USD 14,594,000)

(38) Moreover, the E.G.O. no. 3/2004 stipulates that the price can be paid in several installments, which means that Amitech will also be advantaged by the fact that this payment facility is considered as a soft loan. AVAS established that the price can be paid in 12 yearly installments, without interest.

### **V.2.4. The distortion of competition or the trade between Romania and Member States**

(39) Finally, in order to be considered State aid, the support measure must distort competition or the trade between Romania and Member States of the UE. The sale of State owned assets under market price creates the premises for distortion of competition on the relevant market.

(40) The sale of State owned assets under market price creates the premises for distortion of competition on the relevant market.

(41) Regarding the arguments of AVAS concerning the non-distortion of the competition by granting the State aid, the Competition Council notes that any intervention of the State or public authorities on the market contributes to the distortion of the market conditions. For these reasons, not only the distortion of the competition falls under the provisions of the Law no. 143/1999 on State aid, with subsequent amendments and completions, but also the simple threaten of distorting the competition.

(42) On the strength of the information available, the Competition Council notes that the Ironwork assets will be sold by AVAS to Amitech through direct negotiation. As AVAS did not choose an open and unconditional bidding procedure, it eliminates the possibility of competition between interested companies.

(43) Moreover, as the beneficiary will participate in a market characterized with overcapacity, both on European and international level, there is a serious risk of distorting the trade between Romania and the Member States.

(36) Analyzing the two financial support measures, the Competition Council notes that there is no doubt that these measures are financed through State resources and provide an economic advantage to S.C. Amitech Ductile S.R.L. Calan, distorting the competitive environment. Also, these measures threaten to distort the trade with the Member States of the European Union because the assets are sold through direct negotiation, without being

organized an open bidding procedure to which could take part all the interested competitors.

(44) In conclusion, the financial support measures in favor of S.C. Amitech Ductile S.R.L. Calan are considered as State aids and fall under the provisions of the Law no. 143/1999 on State aid, with subsequent amendments and completions.

### **V.3 The compatibility of the State aid with the competitive environment**

(45) Art. 2 of the Law no. 143/1999 on State aid, with subsequent amendments and completions, provides that State aids granted by the State or from State resources that distort or threaten to distort competition or the trade with the Member States are incompatible with the normal competitive environment.

(46) Nevertheless, some measures can be considered compatible and can be authorized by the Competition Council if certain conditions are fulfilled.

(47) Thus, AVAS has notified and justified the compatibility of the State aid with the competitive environment demonstrating the fulfillment of the conditions provided for in the Regional State aid regulation \*\*, with amendments and completions.

#### *Activity sector- eligibility*

(48) From the information gathered during the investigation, the Competition Council notes that the main activity of S.C. Amitech Ductile S.R.L. Calan, as registered at Trade Office is the production of cast iron tubes (pipes), code CAEN 2721 (code CN 7303.00). Also, according to the supplementary informations received from AVAS during the investigation, the products that S.C. Amitech S.R.L. Calan intends to produce correspond to the following codes:

- 7303.00 – Cast iron tubes, pipes and tubular profiles
- 7303.00.10 – Tubes and pipes, as the ones used for pressure canalization;
- 7303.00.90 – Others;
- 7307 – Iron, cast iron or steel pipes accessories.

(49) The steel sector is defined in Annex no. 1 of the Regulation on regional State aid for large investment projects, with subsequent amendments and completions, and includes the steel sector as defined by the CECO Treaty, as well as the sub-sectors tubular pipes and large welded tubes, which were not covered by the CECO Treaty, but which are part of an integrated production process and which have similar characteristics to the steel sector.

(50) Contrary to AVAS views, the Competition Council notes that the products that Amitech intends to offer are, obviously included in Annex no. 1 of the Regulation on

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\*\* enforced by the Order of the Competition Council's President no. 55/23.03.2004, published in the Official Gazette of Romania, Part I, no. 340/19.04.2004



regional State aid for large investment projects, with subsequent amendments and completions. For these reasons, any State aid intended to be granted to Amitech Ductile must observe the special rules for the steel sector.

(51) The Regulation on regional State aid, with subsequent amendments and completions, stipulates in art. 1(2) that “the regional State aid for investments in the steel sector is forbidden”.

(52) Also, according to art. 23 (2) from the Regulation on regional State aid for large investment projects, with subsequent amendments and completions<sup>\*\*\*</sup>, due to the specific characteristics of the steel sector, State aid for investments in this sector, whatever the value of the investment is, it is forbidden. The Regulation stipulates that the following specific characteristics of the steel sector taken into consideration when forbidding the State aid for investments: the sector’s structure, the overcapacity on the European and international market, the positioning of the majority of steel plants in regional eligible to receive regional aid, the important sums allocated from public resources for the restructuring of the steel sector and the conversion of steel areas.

#### *Other conditions regarding compatibility*

(53) According to the data from the notification form, the aid does not distort the normal competitive environment, achieving the objective for which it has been granted, respectively the development of the region. Also, the gross intensity of the aid is lower than 50% from the eligible costs, the beneficiary contribution is at least 25% and the investment is maintained in the region for a period of at least 5 years.

#### **Conclusions**

(54) The Competition Council considers that granting State aid for investments in the steel sector is incompatible with the State aid rules.

### **DECIDES**

**Art. 1.** The financial measures notified by AVAS in favor of S.C. Amitech Ductile S.R.L. Calan are considered State aid and fall under the Law no. 143/1999 on State aid, with subsequent amendments and completions.

**Art. 2.** Based on art. 12 (1) and (2) letter. d) from the Law no. 143/1999 on state aid, with subsequent amendments and completions, the State aid intended to be granted to S.C. Amitech Ductile S.R.L. Calan, in total amount of 6,636,073 USD is incompatible with the competitive environment and its granting is forbidden.

**Art. 3.** The present decision becomes applicable at the date of its communication.

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<sup>\*\*\*</sup> enforced by Order of the Competition Council’s President no. 252, published in the Official Gazzette of Romania, Part I, no. 252/17.03.2003

**Art. 4.** 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. 5.** The present Decision shall be communicated by the Secretariat-General of the Competition Council to:

- The Authority for State Asstes Capitalization, 50 Cpt. Av. Alexandru Serbanescu st., sector 1;
- S.C. AMITECH S.R.L. CALAN, 17/P Furnalistului st., Jud. Hunedoara

**PRESIDENT**

**MIHAI BERINDE**