

DECISION No.111

As Of 13.06.2005

**Referring to the financial support measures to be granted to the National Company
the International Airport Henri Coanda Bucuresti S.A.**

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, amended and completed by Emergency Government Ordinance no. 121/2003 approved by the Law no. 184/2004,

Based on the provisions of Law no. 143/1999 on state aid published in the Official Journal of Romania, Part I, no. 370 on 3rd August 1999, amended and completed by Law no. 603/2003 and by Government Ordinance no. 94/2004 on regulating some financial measures, approved with amendments and completions by the Law no. 507/2004,

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

On the following grounds,

1. PROCEDURE

(1) By the note no. 108647/20.07.2004 registered at the Competition Council with the no. RS-AS 76/26.07.2004, the Ministry of Public Finance notified to the Competition Council under Art. 6 of *Law 143/1999 on state aid, with subsequent amendments and completions*, the financial support measures for the National Company the International Airport Henri Coanda Bucuresti S.A. The measures consist in credits guaranteed by the state granted through the Ministry of Public Finance for contracting some external credits in order to finance the investment objective “The development and modernizing of the International Airport Bucuresti-Otopeni S.A.”¹.

(2) Since the data presented in the notification submitted was not complete, supplementary information was requested from the Ministry of Public Finance and the Ministry of Transport, Buildings and Tourism, based on art. 6 align. (4) in the Law no. 143/1999, with the subsequent modifications and completions. The notification became effective at the date when all the requested information were submitted, namely on 27.05.2005.

2. DESCRIPTION OF THE FINANCIAL SUPPORT

2.1. The beneficiary of the state support measure

(3) The beneficiary of the financial support measure from the state is the National Company the International Airport Henri Coanda Bucuresti S.A.

(4) The National Company the International Airport Henri Coanda Bucuresti S.A. was established based on the G.D. no. 522/24.08.1998 by the re-organizing of the Autonomous Regie “The International Airport Bucuresti-Otopeni”. The firm is a stock company entirely owned by the state, is organized and carries on its activity based on financial administration.

(5) Its equity amounts ROL 1,432,124,573 thousand and is represented by 14,321,246 nominal shares, each having a value of ROL 100,000.

(6) The Romanian State, as *sole shareholder*, performs its rights and obligations incurring from the ownership right on the company’s shares through the Ministry of Transport, Buildings and Tourism.

(7) The company is headquartered in Otopeni, Ilfov County and is registered at the Trade Registry under no J23/592/04.04.2002, with the unique registering number R6222650.

(8) The company’s financial and economic results, based on the balance sheets data from the last three years, are presented in Table no. 1.

Table no. 1 – The economic- financial situation of the company during 2001-2003
-ROL thousand-

¹ In accordance with the provisions of GD no.527/07.04.2004, the new name of the National Company the International Airport Bucuresti-Otopeni S.A. is the National Company the International Airport Henri Coanda Bucuresti S.A.

Indexes	2001	2002	2003
Total turnover	891,402,239	896,103,419	1,149,364,847
Turnover made in Romania	891,402,239	896,103,419	1,149,364,847
Profit	449,835,619	6,414,673	335,315,236

Source: The notification form

The data presented above prove that the company has an increasing turnover and registers profit during 2001– 2003.

(9) The company's main activity object is to perform exploiting, maintaining, repairing, developing and modernizing services regarding the goods in its patrimony, in its ownership or in concession, in order to insure the proper landing, take-off and land maneuvers of the airships in national and/or international traffic, insuring the airport services for passengers, merchandise and post transit, as well as the national public interest services.

(10) The categories of services performed by the National Company the International Airport Henri Coanda Bucuresti S.A. are:

I. of technical nature:

- to insure the exploiting, maintaining, developing and modernizing of the airport's infrastructure, the runway, track, platforms, etc., in order to facilitate the landing, take-off and land maneuvers of the airships;
- to make available for the air operators an other undertakings performing on the airport's platform, the equipments, airport installations, telecommunications installations, transport, calculating and informatics technique, supervising and control, information and advertising installations;

II. of operational nature:

- to insure the facilities for protecting the air traffic, facilities of infrastructure, mechanical-energetic, telecommunications, informatics, of announcing, of supervising, protection and control, necessary for an optimum and safe performance of the air transports;
- to insure the ground supervising;
- to insure any type of assistance at the passengers' arrival, departure, transfer or transit outside or within the airport;
- VIP services;
- to grant emergency medical services to the passengers and to all the persons working and/or transiting the airport etc.

(11) Starting with 1969, the airport's infrastructure (a track for civil flights with a length of 1,200 meters and the connected buildings) became subject of an accelerated development. The military flight track was extended and modernized to allow safe take-offs and landings for any kind of airship. At the middle of the 80s, the increase in the traffic made necessary the build-up of a new track and a new terminal, the existing terminal's capacity being of 700,000 passengers/year.

(12) The National Company the International Airport Henri Coanda Bucuresti S.A. owns at the present the following capacities:

- platforms (45 waiting positions for airships);

- 2 taking-off-landing tracks with a capacity of 32 rotations/hour/track;
- navigation means;
- equipments for rescue and combat against fires;
- the passengers' area (Arrival Terminal, Departures Terminal, Finger Arrival / Departures, 54 check-in places, 10 international shipping gates, 4 internal shipping gates, 5 bellows);
- cargo terminals with a capacity of 50,000 tons/year;

(13) The air companies operating on the International Airport Henri Coanda Bucuresti S.A. are: Ion Tiriac Air, Acvila Air, Air Moldova, Alitalia, Aeroflot, Air France, British Airways, Becker Aviation Trans, Club Air Sixgo, Czech Airlines, Swiss Airlines, Carpatair, El-Al, Eurojet, Hemus Air, Helios Airways, KLM Northway, Lufthansa, Lot, Malev, Olympic Airlines, Romavia, Scoala Superioara de Aviatie, Syrian, Tarom, Turkish Airlines, TNT Airways, AUA, Cimber Air.

(14) The National Company the International Airport Henri Coanda Bucuresti S.A. is affiliated to international bodies such as: ACI (Airport Council International) – regular member, International Civil Aviation Organization (ICAO), ECAC (European Civil Aviation Conference), Airport Capacity Task Force, EUROCONTROL, European Aviation Group for Occupational Safety&Health, International Technical Committee for Prevention & Extinction of Fire.

(15) According to the provisions of the Law no. 203/2003 on the accomplishment, the development and modernizing of the transport network of national and European interest, the accomplishment, the development and modernizing of the transport network represents a *national priority*. According to art. 10 in the Law no. 203/2003, the transport network of national and European interest encloses the transport infrastructure, traffic management infrastructure and information infrastructure, as well as that used for locating the transport's position and of navigating.

(16) For consolidating the airport's status as a modern airport platform, capable to manage the passengers and merchandise air traffic in total safety and at a high quality level, as well as for coping with the standards imposed by the international agreements, the Romanian State, as sole shareholder, has decided the company's development and modernizing through a large size project, consisting in the consolidation and the development of the airport infrastructure in compliance with the international safety requirements.

(17) In order to accomplish this objective, in 1991, it was organized an open international bidding, following to which the performance of the development workings has been knocked down to a Joint Venture formed from the Italian companies ItalStrade, ItalAirport, CEI MILANO and the Romanian company SC CCCF SA, which was the basis for the joint Romanian-Italian company ROMAIRPORT SRL.

(18) In order to start the workings, it was elaborated a MASTER PLAN for the airport's development, structured in three phases (on short term, medium term and long term) which had as objectives the infrastructure's development, the modernizing and development of the airport's services.

(19) The investments for the development and modernizing of the International Airport Henri Coanda Bucuresti regard the development of the airport's infrastructure.

(20) Art. 11 align. (1) and (2) in the Law no. 203/2003, regarding the achievement, development and modernization of the transport network of national and European interest, defines the transport infrastructure as follows: „the transport infrastructure encloses the roadways, railways, the interior navigating ways, and the delivery nodes/points of the networks”, and “the delivery nodes/points of the networks are formed from the ports located on the interior navigating ways, sea ports, airports and combined transport terminals.”

(21) According to the Law no. 203/2003, the national and European interest transport network must insure:

- the continuous improvement of the free movement for the persons and merchandise on the Romania's entire territory under the best possible social, environmental and safety conditions, in accordance with the accomplishment of the objectives Romania aimed for in order to accede to the European Union;
- the indiscriminating access to the use of the transport infrastructure, under acceptable economic, quality and safety conditions;
- an equilibrated development and the use of all transport ways, taking into account their compared advantages;
- the best use of the existing transport infrastructure capacities;
- inter-operability within the transport ways;
- covering the whole Romania's territory so that it would be facilitate the users' access, to insure the connection of the isolated, most faraway areas with the central areas, as well as the connection without problems between the large urban centers and the rest of the country;
- connecting the transport network to the trans-European transport network and to those of the neighbor countries, promoting in the same time the inter-operability and access to the same networks;
- performing the transports necessary for the country's defense needs during peace times, crisis periods as well as war times.

(22) According to the Law no 213/1998 on the public property and its legal regime, the take-off, landing tracks, the railways and the departure-arrival platforms situated on them and the lands on which these are situated on, are considered goods part of the public domain of the State. According to art. 1 in the law, the public ownership right belongs to the State or the territory-administrative units, related to the goods which, according to the law or by their nature, are of public use or interest.

(23) By the Concession Contract no. MM/2716 on 1.06.2001, the State, through the Ministry of Public Workings, Transport and Tourism, concessioned for a 49 year period, the goods in public ownership consisting in the lands related to the take-off- landing tracks, the passengers departure-arrival platforms, the running tracks, the quick exit roads, to the National Company the International Airport Henri Coanda Bucuresti S.A., company which is 100% owned by the state.

(24) According to the concession contract, the goods of the nature of the newly created public property or came from the development and/or modernizing of the existing ones, with resources insured from the State budget, are concessioned to the National Company the International Airport Henri Coanda Bucuresti S.A., according to the legal provisions, by acts annex to the contract.

(25) By the concession contract, the company has to insure the efficient, continuous and permanent exploiting of the goods object of the concession, with the satisfying of the public interest, according to the objectives set by it.

(26) For having the right to use the goods concessioned from the State, the National Company the International Airport Henri Coanda Bucuresti S.A., as concessor, has the obligation to pay an annual royalty applied to the amount represented by the gross revenues obtained from the using of the public domain.

2.2. The market on which the National Company the International Airport Henri Coanda Bucuresti S.A. activates

(27) The company acts on the market of the airport services, insuring the conditions for performing the activities specific for the civil aviation related to the international airports, namely the landing, the take-off and ground maneuvering of the national and/or international traffic airships, the persons, merchandise and post transit, as well as services of public national interest.

(28) From the passengers and merchandise traffic's point of view, during January the 1st-December 31st, 2003, the Romanian airport services market was the following:

a) for passengers' traffic:

Table no. 2 – The structure of the air traffic for passengers in 2003

Company	Passengers' Traffic (transported persons)	%
Total, from which:	2,900,637	100.00
The International Airport Henri Coanda Bucuresti	2,323,685	80.109
The International Airport Timisoara	213,505	7.361
The Airport Cluj-Napoca	120,804	4.165
The International Airport Constanta – Mihail Kogalniceanu	61,658	2.126
The International Airport Baneasa	51,271	1.768
The Airport Arad	13,219	0.456
Others	116,495	4.016

Source: The notification form

b) for merchandise traffic

Table no. 3 – The structure of the air traffic for merchandise in 2003

Company	Merchandise Traffic (tons)	%
Total, from which:	16,081	100.00
The International Airport Henri Coanda Bucuresti	14,183	88.197
The International Airport Timisoara	360	2.239
The Airport Cluj-Napoca	78	0.485
The International Airport Constanta – Mihail Kogalniceanu	281	1.747
The International Airport Baneasa	711	4.421
Others	468	2.910

Source: The notification form

As it can be seen, the National Company the International Airport Henri Coanda Bucuresti S.A. owns a 80.109% quota from the passengers' traffic, and 88.197% from the volume of the transported merchandise. The National Company the International Airport Henri Coanda Bucuresti S.A. has, practically, no domestic competitors on the market it activates on. The other airports performing airport services in Romania have a majority local character and a low traffic level.

(29) According to the Government decisions for approving the setting up of the airports which activates in Romania and theirs statutes, the market for the airport services in Romania is not liberalized due to the fact that the airport companies delivering such services are 100% State owned and the State establishes the development policy of the airport infrastructure in Romania, according to the national development strategy.

2.3. Description of the Project „The development and modernizing of the International Airport Bucuresti – Otopeni”

(30) The initial contract for the development and modernization of the International Airport Bucharest – Otopeni, named in present International Airport Henri Coanda Bucharest, has been concluded between the Autonomous Regie International Airport Bucharest – Otopeni and the companies ITALSTRADE S.p.A., C.C.C.F. – S.A., ITALAIRPORT S.p.A. and C.E.I., constituting a Joint Venture, on 30.04.1992. Following that, it has been drawn up the Master Plan of the airport development, comprising several phases.

(31) By the G.D. no. 94/1992, was approved the Project „The development and modernizing of the International Airport Bucuresti – Otopeni”.

(32) The initial project was subsequently modified and, as a result, annexes to the contract were signed, also establishing: the division of the workings to be made in two parts, named Phase I and Phase II, the modification of certain priorities in the work program and the contract's value, the need to extend the Phase II of the Project, due to the technical – economic modifications resulted from the utilization of new technologies and materials, according to the airport operational demands imposed by the new Romanian and international standards.

(33) Phase I of the Project was carried out during 1994 -1998. The activities were based on provisions of GD no.191/1992, modified by GD no. 510/1994, GD no. 94/1992, GD no. 518/1992 and GD no. 587/1994. The main works carried out in Phase I envisaged:

- finalizing of the 'departures' passenger terminal;
- execution of a 'finger' allowing the complex processing of passenger aircraft through 5 special devices;
- consolidation of the no. 1 take-off/landing runway and the rehabilitation of the related marking system;
- consolidation of the main embarking/debarking platform;
- execution of a platform for aircrafts with a stay longer than one day and the consolidation of the related runway;
- the appropriate marking of the new platforms and related runways;
- execution of infrastructure to ensure the required airport utilities such as electric and heating power, air conditioning and ventilation, water and sewage networks;
- rehabilitation of access ways to passenger terminals and aircraft platforms.

(34) Phase II of the Project was carried out during 1999–2003. By Addendum no.4 to the Contract, in April 9th, 1999 the contracting parties agreed the terms to begin Phase II of the Project. The works and financing were based on the provisions of GEO no. 73/1999. The main works carried out in Phase II envisaged:

- modernizing of International Arrivals terminal;
- modernizing of the ground floor of Domestic Departures and Arrivals terminal and of the baggage processing area;
- modernizing of the terminal connection area;
- extension of the take-off/landing runways and the rehabilitation of the Delta track (starting works at the new track alongside runway no. 1 and transforming Delta track into a quick take-off runway);
- extension of the passage roadway beneath „November” track and of the D10 inner road to ease the traffic to the technical, customs and cargo area.

(35) By Addendum no.5 to the Contract, following the analysis and assessment of the existing conditions, the contracting parties agreed the extension of Phase II of the Project. The extended Phase II was carried out in 2003–2004, and the financing and launch of the works were based on provisions of GD no. 168/2003. This extension was determined by technical and economic changes occurred following the technological reorganization, changes of construction solutions and using new materials and technologies, according to new Romanian and International airport operational standards. The increase of the air traffic volume required measures to adjust the airport infrastructure to the new conditions.

(36) The development and modernization of Henri Coanda Bucharest International Airport will allow this company to accommodate a higher aircraft and passenger traffic, in view of meeting the objectives of the Romanian economy restructuring and of the accession to the European Union.

(37) The projected numbers for the passenger and aircraft movements on Henri Coanda Bucharest International Airport up to 2010, are presented below:

Table no. 4 – The evolution of the projected number of passenger and aircraft movements in 2005 - 2010

Year	Transported passengers	Aircraft movements (landings and take-offs)
2005	3,200,000	46,200
2006	3,700,000	51,250
2007	4,600,000	59,000
2008	5,300,000	65,500
2009	6,100,000	72,700
2010	7,000,000	80,500

Source: The notification form

(38) The completion of the project will allow ‘Henri Coanda’ Bucharest International Airport to apply the recommendations of the International Civil Aviation Organization (ICAO) in the field of air traffic and to process an increasing number of passengers and aircrafts. Also, it will allow Romania to meet its obligations related to the certainty and safety of the flights, customs and border control and to develop air transport connections with EU Member States.

(39) Besides investments carried out within the Project „Development and Modernization of Bucuresti – Otopeni International Airport”, the National Company Henri Coanda International Airport Bucuresti SA also carries out a series of investments in airport infrastructure having the same objective, respectively the development and modernization of the airport infrastructure. These investments have as purpose the development of the airport capacity, the increase of the air traffic safety and the enhancement of the airport security.

2.4. Financial support granted to finance the investment objective „The Development and Modernization of Bucuresti – Otopeni International Airport”

(40) The financial support measures notified by the Ministry of Public Finance consist in credits guaranteed by the state granted through the Ministry of Public Finance to contract foreign loans, in order to finance the investment objective „The Development and Modernization of Bucuresti – Otopeni International Airport”, loans to be paid back from

the state budget. In addition, for the completion of the investment project financing, the company receives budgetary allocations.

(41) The investments in infrastructure carried out by the Company along with the investment Project „The Development and Modernization of Bucuresti – Otopeni International Airport”, having the same objective respectively the development and modernization of the airport infrastructure, do not involve state resources being entirely financed from own resources of the Company.

(42) The initial financing of the investment project “The Development and Modernization of Bucuresti – Otopeni International Airport” was approved by GD no.191/1992, modified by GD no. 510/1994, with a value of ROL 16,729.3 mln., set in prices of June 1991, value subsequently adjusted according to the price evolution. The financing of the investment objective is ensured like this:

- expenditures for purchases and services in local currency of about ROL 4 billion, from the state budget, under budgetary allocations;
- expenditures in foreign currency of ROL 12.7 billion, representing the equivalent of USD 70.5 million, from long term external loans.

(43) The payback of the external loans, and payment of interest and related commissions, as well as expenditures for the purchases and services in local currency are financed from the state budget.

(44) Later on, by Addendum no. 3 to the Contract for „The Development and Modernization of Bucuresti – Otopeni International Airport”, the parties have established the final value of Phase I of the investment project to ROL 2,376,307,723 and USD 70.5 million.

(45) [...]*

(46) By Addendum no. 4 to the Contract, the signing parties have agreed the terms to begin Phase II of the investment project. As consequence, GEO no.73/1999 approved the continuation of the project and the financing of Phase II of the investment objective „The Development and Modernization of Bucuresti – Otopeni International Airport” in total value of EURO 55,674,121. According to the ordinance, the financing is to be done as follows:

- *the foreign currency portion:*
 - 85% from bank loans paid back from the state budget, respectively EURO 40,171,926;
 - 15% company’s own sources, respectively EURO 7,089,163;
- *the local currency portion:* respectively the equivalent of EURO 8,413,032, representing expenditures for purchases in local currency, from company’s own sources, from bank loans and, in completion, from the state budget, through the budget of the Ministry of Transport, under budgetary allocations.

* Confidential information

(47) [...]*

(48) [...]*

(49) By Addendum no.5 to the Contract, the parties have agreed the extension of the financing for Phase II works, the so called the extended Phase II. The GD no.168/2003 gave the approval for the continuation and financing of the works for the investment objective „The Development and Modernization of Bucuresti – Otopeni International Airport”, Phase II extended, in amount of EURO 43,634,716.

(50) [...]*

(51) [...]*

3. EVALUATION OF THE FINANCIAL SUPPORT MEASURES GRANTED TO THE NATIONAL COMPANY ‘HENRI COANDA’ INTERNATIONAL AIRPORT BUCURESTI S.A.

3.1. The state aid character of the notified measures, according to the provisions of Law no. 143/1999 on state aid, with the subsequent modifications and completions and of Art. 87(1) of the EC Treaty

(52) Art. 2 from Law no. 143/1999 on state aid, with the subsequent modifications and completions, defines State aid as any support measure granted by the State or by local administration, from State resources or resources of the local administration, no matter the form, distorting or threatening to distort competition, by favorizing certain enterprises, the production of certain goods, the discharge of certain services, or affecting trade between Romania and EU Member States, being considered incompatible with a normal competition environment.

(53) Art. 87 of EC Treaty provides that any aid granted by a Member State or from State resources, in any form, distorting or threatening to distort competition by favorizing certain enterprises or the production of certain goods, to the extent affecting trade between EU Member States is considered incompatible with the common market.

(54) In order to determine the State aid character of the financial support granted to the National Company Henri Coanda International Airport Bucuresti, the Competition Council has to establish whether the financial support:

- is granted from State resources;
- favors some undertakings or the production of some goods;
- distorts or threatens to distort the competition;
- affects the trade between Romania and the other EU Member States.

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(55) The support measures granted for the investment objective are under the form of external loans guaranteed by the state and repaid from the state budget and from Company revenues, as well as from budgetary allocations in completion. The analysis of the State aid character of the notified measures will be performed by analyzing the extent of meeting the criteria set in paragraph 54.

3.1.1. Granting the financial support to the National Company 'Henri Coanda' International Airport S.A. from State resources

(56) The investment objective is co-financed from the State budget, by repayment of a substantial part of the external loans contracted by the National Company Henri Coanda International Airport Bucuresti S.A., as well as from budgetary allocations in completion. In consequence, the notified financial support measure involves State resources.

3.1.2. Favorizing of some undertakings or the production of some goods

(57) The general principle, stipulated in the Guidelines regarding the application of art. 87 and art. 88 of the EC Treaty in the aviation sector, is that the financing of the transport infrastructure projects, such as airports, motorways etc., represent measures of general economic policy having as purpose to meet some planned objectives, facilitating regional development and/or the implementation of national and regional transport policies. As a consequence, such measures fall under state authorities' tasks and, as a general rule, can not be controlled by the European Commission through rules relating to state aid.²

(58) Also, art.2.5. of the Guidelines regarding the authorization of the State aids in the field of air transport, issued by the Competition Council and published in the Official Gazette of Romania no. 806 as of 17.11.2003, provides that realizing infrastructure projects (airports, motorways, bridges) represent a general economic policy measure which can not be controlled by the Competition Council, on the basis of the provisions of Law no. 143/1999 on state aid with subsequent modifications and completions. Infrastructure development decisions do not fall under the application of the present Guidelines to the extent to which these answer to planning needs or the implementation of national policies regarding the environment and transports.

(59) However, art.2.6 of the Guidelines issued by the Competition Council stipulates that this general principle is applied only for infrastructure works, without prejudice to the assessment of some possible elements of State aid resulting from the preferential treatment granted to some companies (undertakings) utilizing infrastructure.

² Application of Articles [87] and [88] of the EC Treaty and Article 61 of the EEA Agreement to State aids in the aviation sector, OJ C 350, 10/12/1994, paragraph 12

(60) The recent approach of the European Commission regarding the concept of “economic agent” within the meaning of art. 87(1) from the EC Treaty is that the economic agent is any public or private entity carrying out an economic activity³.

(61) The National Company Henri Coanda International Airport Bucuresti S.A carries out an economic activity consisting in discharging airport services, active on the airport services market, therefore meeting the requirements to be considered an agent economic.

(62) The financial support is being granted to the National Company Henri Coanda International Airport Bucuresti S.A. to realize the airport infrastructure project, the implementation of such a project being in the interest of the community with the role of stimulating the economy as a whole.

(63) The Competition Council considers that funds granted to the National Company Henri Coanda International Airport Bucuresti S.A. constitute a resource allocation from the state budget to co-finance an action as a task of the state, which is responsible for the local and regional planned development. Such an allocation of funds from the state budget to the National Company Henri Coanda International Airport Bucuresti S.A, to which the state, through the Ministry of Public Works, Transports and Tourism has concessioned the public goods within the airport perimeter, for activities in the task of the public authorities do not constitute normally state aid within the meaning of art 87.1 from the EC Treaty and art. 2 para.(1) from the Law no. 143/1999 on State aid.

(64) However, although the National Company Henri Coanda International Airport Bucuresti S.A is a joint stock commercial company wholly owned by the state, according to its bylaws it is organized and operates based on economic management principles. The state puts at disposal of the Company the airport infrastructure (tracks, take-off spaces, transport lanes, safety equipments, hangars etc.), and the Company, at its turn, can use it for economic activities.

(65) According to the decision of the European Court of Justice in the case of *Airports de Paris*⁴, putting at the disposal of air carriers and other users of facilities of an airport constitute an economic activity. Also, according to the mentioned decision, the entity responsible with the operation and management of the airport is an economic agent within the meaning of art. 87.1 from the EC Treaty, irrespective of its legal status and the way it is financed.

(66) Based on the above and considering the recent case law of the European Commission⁵, the Competition Council consider the possibility that the financing from state sources of the construction/development of airport infrastructure, subsequently put at the disposal of

³ According to European Commission case law, any activity consisting in offering goods and services on a certain market represents economic activity (C35/96 *Commission v Italy*, ECR 1998, p.3851 and the stay of ECJ as of 12.09.2001 in joined cases C 180-184/98, *Pavlov*).

⁴ Case C 82/2001 P, stay ECJ of 24.10.2002.

⁵ ECJ of 19.01.2005, State aid No N 644i/2002, *Development of municipal economic infrastructure pursuant to Part II, Section 7 of the Framework plan under the joint Federal Government/Lander scheme for improving regional economic structures: (i) Construction or development of regional airports.*

an airport operator carrying out an economic activity in the airport perimeter, to confer an advantage to it in comparison with its competitors.

3.1.3. Distorting of competition and effect of trade between Romania and the Member States of the EU

(67) According to case law of the European Court of Justice, the effect on trade with the Member States of the European Union, assumes that the economic agent receiving financial support may influence the trade flows between Romania and the Member States of the European Union⁶. As a rule, any financial support granted to an economic undertaking operating on a liberalized market may affect trade between Romania and the Member States of the European Union.

(68) Although the National Company Henri Coanda International Airport Bucuresti S.A falls under the airport category with an annual traffic between 1 and 5 million passengers, having currently an annual traffic of approximately 2.5 million passengers, so not a large scale airport, the market on which the Company is operating on is not limited to the domestic airport services which is not yet liberalized. Having in view the international airport specificity we may consider that the Henri Coanda International Airport Bucuresti activates on the European airport services market. It results that the facilities granted for the development and modernization of infrastructure can contribute to the distortion of competition and can affect trade between Romania and other Member States of the European Union.

(69) As a consequence of the above, the Competition Council can not exclude the possibility that the financial support granted to the Company to constitute State aid, within the meaning of art. 87.1 from the EC Treaty and of art. 2 para. (1) of Law no. 143/1999 on state aid.

3.2. Assessment of the State aid for the National Company Henri Coanda International Airport Bucuresti S.A.

(70) The State aid for the National Company Henri Coanda International Airport Bucuresti S.A consist in financing external loans contracted by the company in order to carry out planned investments in amount of ROL 1,954,596,216 thousand, to which interest and commissions amounting ROL 525,071,521 thousand are added, as well as budgetary allocations for capital expenditures amounting ROL 833,166,290 thousand. Total value of the state aid is of ROL 3,312,834,027 thousand.

(71) The total value of the investment carried out for the objective “The Development and Modernization of Bucuresti – Otopeni International Airport” is of ROL 5,221,031,342 thousand. In the same time, besides the investment objective mentioned above, the Company carries out a series of investments in airport infrastructure, with the aim of developing airport capacity, increasing air traffic safety and enhancement of airport security. Their value amounts to ROL 1,632,691,685 thousand. These investments are carried out entirely from Company’s own sources.

⁶ European Court of Justice judgement of 17.09.1980, C 730/79, Philip Morris, ECR 1980.

(72) The total value of investments in the development and modernization of the airport is ROL 6,853,723,027 thousand.

(73) The total contribution of the state aid beneficiary to the financing of the investments carried out in the infrastructure of Henri Coanda International Airport is of ROL 2,980,641,110 thousand, representing 43.5% from the total investment cost.

3.3. Compatibility of the state aid

(74) As previously mentioned, the geographic market where the National Company Henri Coanda International Airport Bucuresti S.A. operates is not limited only to Romania's territory. Considering the regional importance of the Henri Coanda Airport Bucuresti we can appreciate the geographical market is given by the European market of airport services.

(75) Based on art. 87(3)(a) EC Treaty, aid for facilitating economic development of the regions where the living standards are abnormally low or where there is a high unemployment level can be considered compatible with the common market.

(76) The Accession Council Romania – European Union decided that all state aids granted in Romania are assessed taking account of the fact that the entire territory of Romania is considered an area identical with those areas of the European Community provided by art. 87 (3) (a) from the EC Treaty regarding the establishment of the European Community.

(77) The development and modernization of the Henri Coanda International Airport Bucuresti has a strong regional impact because, as mentioned in paragraph 28, this is the main airport of Romania, with a share of 80.1% in passenger traffic and 88.2% of cargo traffic. The overwhelming majority of aircraft, passenger and merchandise movements to and from Romania are carried out through this airport. As such, developing the Henri Coanda International Airport Bucuresti is in the benefit of the entire territory of Romania.

(78) Taking into consideration that the geographical market where National Company Henri Coanda International Airport Bucuresti S.A. operates is the European airport service market, the development of this airport can have an important economic and social impact regarding, among others, social and regional cohesion and the objective of Romania's accession to the European Union. The economic and social impact of the development of the airports has been confirmed in recent survey of ACI from 2004, "The Social and economic impact of airports in Europe".⁷

(79) As mentioned above, providing transport infrastructure is generally a task of the state based on its responsibilities of territorial planning, regional and/or local development and the implementation of national and regional transport policies. The analysis of such an investment in infrastructure does not involve only the consideration of the fact that airports

⁷ While airports create directly 1,100 jobs for each 1 million passengers transported in a year, the total impact (including direct and indirect jobs) is valued at approx. 2,200 jobs or the double of this total. These are economic engines, "strategic catalysts" acting like a magnet more other economic activities.

discharge a commercial activity but will also take into consideration the fact that the development of airport infrastructure is in the benefit of the public interest.

(80) In the case of the notified aid, the financial support is meant only for investments in airport infrastructure required by aerial activities carried out in the perimeter of the airport, which is open to all possible users, based on non discriminatory terms (tracks, takeoff spaces, transport lanes, safety equipments, hangars etc.). The financial support will not be used for operating or maintenance costs or investments in the infrastructure of some private operators, but will serve exclusively to infrastructure development projects providing services for the wide public interest. The financial support will be in accordance with the national and regional development objectives.

(81) As mentioned in paragraph 21, the non-discriminatory access of all users to the transport infrastructure of Romania is established by Law no. 203/2003. Thus, according to the law, the state, as sole shareholder, must ensure the development of the infrastructure and the non-discriminatory access of all users in order to provide freedom of movement for people and merchandise throughout the entire of Romania's territory at the best social, environment protection and safety possible standards in accordance with the objectives Romania has set in order to access to the European Union. Also, the law provides that by consolidating infrastructure the state aims to connect Romania to the trans-european transport network and to the neighboring countries networks, promoting in the same time interoperability and the access to these networks.

(82) The Competition Council notes that, regarding airports, these are mainly financed from taxes levied upon airport users and other users of the airport facilities. However, when requirements imposed by the air traffic safety and volume demand significant investments, the required financing for the development and modernization of the infrastructure can not be covered from revenues resulting from these levies. In the case of the Henri Coanda International Airport, reinvesting the profit in financing investments in infrastructure is not sufficient, which determined the necessity of public co-financing for these investments, in order to allow the airport to continue operating in the wide public interest.

(83) The development of the Henri Coanda International Airport will allow the economic development of all the regions of Romania being a catalyst of the social and regional cohesion, considering the objective of Romania's accession to the European Union.

(84) The airport fees levied by the National Company Aeroportul International Henri Coanda Bucuresti S.A., are applied at the same level to all air traffic operators. Compared with other airports from Europe, fees levied by Henri Coanda Airport are the following:

Table no.5 – Henri Coanda Airport fees compared to those of Sofia, Budapest and Frankfurt airports

No.	Service description	Airport fees			
		Bucharest	Sofia	Budapest	Frankfurt
1.	Landing	13 USD/to (min. 85 USD)	Between 20 and 740 Euro/flight	Between 7 and 10.3 Euro/to	Between 125 and 150 Euro/flight + 1.60 Euro/to for weight over

			according to aircraft weight		35 to
2.	Stay	0.20 USD/to/h	25% of landing/24 h	2.18 Euro/24 h/to	28 Euro/day; between 05:00-20:59, for over 24 h: between 22 and 57.5 Euro and between 21:00-04:59, for each hour between 16:50 and 53:50 Euro
3.	Passenger services	14 Euro/passenger	9 Euro/passenger	13.35 Euro/passenger	14.25 Euro/EU passenger; 15.25 Euro/non-EU passenger, Europe; 17.10 Euro/passenger intercontinental flight; 10 Euro/passenger in transfer or transit flights
4.	Security services	10 Euro/passenger	N/A	3.5 Euro/passenger	0.39 Euro/passenger

Source: supplementary information

(85) As resulting from data in the above table, the airport fees levied by National Company Aeroportul International Henri Coanda Bucuresti S.A are in many cases higher than those of other European airports. Based on the data in the table, the Henri Coanda Airport concluded operating agreements, containing the same contractual clauses, with the following airlines: Ion Tiriac Air, Acvila Air, Air Moldova, Alitalia, Aeroflot, Air France, British Airways, Becker Aviation Trans, Club Air Sixgo, Czech Airlines, Swiss Airlines, Carpatair, El-Al, Eurojet, Hemus Air, Helios Airways, KLM Northway, Lufthansa, Lot, Malev, Olympic Airlines, Romavia, Scoala Superioara de Aviatie, Syrian, Tarom, Turkish Airlines, TNT Airways, AUA, Cimber Air.

(86) Due to the fact that the notified financial support is used to modernize and consolidate the public airport infrastructure, which is put at the disposal of all operators active on the relevant market, without involving a preferential treatment in favor of other air transport companies operating in the airport perimeter to the detriment of others, the Competition Council considers that the support measure does not unduly affect competition on the airport services market or the air transport services market.

(87) The Competition Council notes that granting the facilities for the airport can serve to a better functioning of the air transports, to and from Romania's territory, in the general economic interest. According to airport bylaws, the obligations imposed are related to the maintenance and modernization of the public transport infrastructure and provision of the non-discriminatory access for all potential users. In consequence, the manager of the airport, respectively the National Company Henri Coanda International Airport Bucuresti S.A., has the obligation to ensure proper airport infrastructure in order to meet obligations imposed as suppliers of public services.

(88) The Competition Council notes that the financial support is used by the National Company Henri Coanda International Airport Bucuresti S.A. only for investments in airport infrastructure meeting the requirements of an aviation public service which is open to all potential users in non-discriminatory terms. Also, the Competition Council notes that

public financing is limited to the minimum required investment costs for the development and modernization of the airport infrastructure, through the granting of the financial support there are no operating costs covered.

(89) The increase of the air traffic may require extensions and improvements of the facilities an airport can not sustain from own resources in normal market conditions. Considering the financial support granted to an airport can be justified by the fact that airports do not have sufficient resources to finance such absolutely required investments in order to carry out business in certainty and flight safety conditions, the Competition Council notes the necessity of financing from state resources of the investment objectives in the infrastructure of the Henri Coanda International Airport Bucuresti, while the company does not have the required financial resources to carry out the aimed objectives from own resources.

3.4. Conclusions

(90) Realizing the proposed objectives within the investment process to modernize the infrastructure and the effect of aligning the Henri Coanda International Airport Bucuresti S.A. to international standards in the airport field regarding airport security and air traffic safety, taking into consideration that in the current geo-political context, this represents an airport of major importance in the area. The allocated amounts from the state budget for the project „Development and modernization of the International Airport Bucuresti – Otopeni” aims the development of the airport infrastructure per se, as well as the direct support infrastructure. Thus the financial support granted by the state is used only to consolidate and develop the airport infrastructure, infrastructure from which benefit in a non-discriminatory manner all users – both airlines, as well as ground services providers.

(91) The achievement of the investment project at Henri Coanda International Airport Bucharest will lead to assuring the free movement of persons and goods on the entire Romania’s territory, on the best social, environment and safety conditions, according to the Romania’s objectives for the accession to the European Union. The development and modernization of the infrastructure will allow the airport to achieve a better connection to the trans-European transport network and to the neighboring countries networks, promoting in the same time the interoperability with these ones, if the infrastructure is available on non-discriminatory basis to all airlines and services suppliers which operate within the airport perimeter.

DECIDE

Art. 1. The state aid for the National Company Henri Coanda International Airport Bucuresti S.A. represents a state aid measure compatible with Romanian legislation and the agreements Romania is a part of .

Art. 2. Based on art.12 para. (2) lit. b) from Law no.143/1999, with the subsequent modifications and completions, authorize the state aid for National Company Henri Coanda International Airport Bucuresti S.A.

Art. 3. The state aid value is of ROL 3,312,834,027 thousand.

Art. 4. The present Decision is applicable as of its communication.

Art. 5. According to art. 24 from the Law no.143/1999 with subsequent modifications and completions the state aid granting authorities will submit to the Competition Council information regarding state aids granted in order to inventory and monitor them.

Art. 6 According to provisions of art. 29 from the Law no.143/1999 with subsequent modifications and completions the present decision can be appealed by interested parties to the Appeals Court of Bucharest, Administrative Litigation Section within 30 days from its communication.

Art. 7 The present Decision will be communicated by the Secretariat General within the Competition Council to the following:

- Ministry of Public Finance, str. Apolodor nr. 17, sector 1, Bucuresti;
- National Company 'Henri Coanda' International Airport S.A., Soseaua Bucuresti – Ploiesti, Km. 16,5, Otopeni, 075150, Romania.

PRESIDENT

MIHAI BERINDE