

**DECISION OF THE COMPETITION COUNCIL**  
**no. . 209 as of 21.11.2005**  
**REGARDING THE STATE AID INTENDED TO BE GRANTED FOR**  
**SC PARC INDUSTRIAL SRL HUNEDOARA**

**THE COMPETITION COUNCIL,**

With regard to the provisions of the European Agreement establishing an association between Romania, on one hand, and the European Communities and their Member States, on the other hand, ratified by Law no. 20/1993, published in the Romanian Official Gazette no. 73, Part I, of 12.04.1993,

With regard to the provisions of the Competition Law no. 21/1996, republished in the Official Gazette, Part I, no. 742 from 16.08.2005,

With regard to the provisions of the Statea Aid Law no. 143/1999, republished in the Official Gazette, Part I, no. 744 from 16.08.2005,

With regard to the provisions of the Regulation regarding the regional state aid, enforced by the Order of the President of the Competition Council no. 55/2004, published in the Official Gazette Part I, no. 340 of 19.04.2004, modified and completed by the Order of the President of the Competition Council no. 221/2004, published in the Official Gazette , Part I no. 847 of 16.09.2004,

With regard to the provisions of the Decree no. 57/2004 on the appointment of the Competition Council's members.

**Based on the following reasons,**

**1. THE NOTIFICATION PROCEDURE**

(1) By address no. VP4/2557/15.08.2005 registered with the Competition Council with no. RS-AS 78/17.08.2005, the Authority for the Recovery of State Assets (hereafter called AVAS) has notified, based on art. 15 from the Law no. 143/1999 on state aid, republished, the individual state aid for SC PARC INDUSTRIAL SRL Hunedoara (hereafter called SC PARC).

(2) By address no. CC/2230/29.08.2005 supplementary information was requested from AVAS regarding the SME status of the state aid beneficiary, the infrastructure works to be financed through the aid, the contribution of the beneficiary of the aid, the maintenance of

the investment and the main competitors in the West Development Region.<sup>1</sup> The notification became effective on 26.10.2005.

## **2. OBJECTIVES OF THE FINANCIAL SUPPORT**

(3) The purpose of setting up ‘Parcul Industrial Hunedoara’ is to stimulate local and regional economic development by providing industrial and commercial infrastructure that will attract companies and entrepreneurs to conduct high added value productive activities in the region. Such support is necessary and vital in view of the recent restructuring that took place at SC SIDERURGICA SA Hunedoara causing massive displacement of workers and other socio-economic consequences for the local and regional economy. It is expected that the support will regenerate the area and create jobs for the local community.<sup>2</sup>

(4) The infrastructure works for Parcul Industrial Hunedoara commenced in 20.09.2004 following a public tender in accordance with GEO no. 60/2001 and approved by the specialty department of the Ministry of Administration and Interior. The tender was won by SC HOLMED CONSULTANTA SRL Bucuresti which conducted a feasibility study and estimated a total investment of ROL 95.5 billion for the project. Another public tender was held during which SC ISON TRADE CONSTRUCT SRL Hunedoara was selected as general contractor to realize all infrastructure works for the amount of ROL 95.8 billion.<sup>3</sup>

(5) In order to support the project and ensure its success the State provided ROL 19.5 billion as part of a regional development program „Industrial Parks” according to GD no. 1116/2001.<sup>4</sup> The project now requires further state support in the amount of ROL 14,963,169,519 (this amount represents the proceeds arising from the privatization of SC SIDERURGICA SA Hunedoara following the sale by AVAS of the company’s shares) to ensure the successful completion of the investment project.

## **3. DESCRIPTION OF THE MEASURES**

### **3.1. The legal basis for granting the aid**

- art. 15 from GEO no. 116/2003 regarding the privatization of SC SIDERURGICA SA Hunedoara<sup>5</sup>.

### **3.2. The measures of financial support for SC PARC**

(6) The financial measures i.e. ROL 14,963,169,519 notified by AVAS are to be granted to SC PARC with the objective of completing the infrastructure works to ensure the proper functioning of the industrial park. In this respect, according to art. 15 of GEO no. 116/2003 concerning the privatization of SC SIDERURGICA SA Hunedoara, modified by GEO no.

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<sup>1</sup> Further information was requested from AVAS which is available if requested;

<sup>2</sup> The investment is expected to create approximately 2,000 new jobs;

<sup>3</sup> The Ministry of Administration and Interior monitors the investment through the Industrial Parks Program. All documents related to the Parcul Industrial Hunedoara are submitted to this institution;

<sup>4</sup> Decision no. 521/2003 of the Competition Council authorized the allocation in the amount of ROL thousand 19,533,533 for the investment project;

<sup>5</sup> GEO no. 92/2005 for the modification of art. 15 from GEO no. 116/2003 regarding the privatization of SC SIDERURGICA SA Hunedoara; GD no. 966/2004 establishing the procedure regarding the payment of the amount representing the proceeds received by AVAS from the sale of the shares held at SC SIDERURGICA SA Hunedoara to Parcul Industrial Hunedoara.

92/2005, the proceeds, as indicated above, arising from the sale of the company's shares held by AVAS will be allocated to SC PARC.<sup>6</sup>

#### **4. THE BENEFICIARY OF THE MEASURES (SC PARC)**

(7) The Beneficiary of the financial measures granted by the state is SC PARC which is a management company specializing in managing business parks. Companies engaged in managing business parks have a special status and participants in such companies do not have an equity interest as such, but are considered to be business associates. In this case the business associates are the Hunedoara Local Council and a private entity.<sup>7</sup> The company is incorporated with the Registry of Commerce no. J20/894/15.11.2002, and 15018316 identification code.

(8) The Competition Council considers that the services provided by Parc, i.e. the management of an industrial park, can be considered as falling within public service concession. Indeed SC PARC's remuneration comes primarily through the collection of rental income from occupiers of the units and other charges arising from management. The application of general principles does not apply where the above services are provided "in-house"<sup>8</sup>. As set out in paragraph (7) of the decision the bulk of the company's shares are held by the Hunedoara Municipal Authority which appoints and exercises influence over the management team. Based on the information from the grantor, SC PARC does not exercise a high degree of independence from the Authority. It can be said, therefore, that the Authority exercises the same influence over SC PARC as it does over any other Department in the Authority.

(9) SC PARC was set up on 31.12.2002. At the end of 2004 the company had 3 employees, a turnover of ROL 166,750 and a net profit of ROL 112,813.

(10) According to point 8 of art. 2 of the Regulation on state aid for SMEs, as amended, an enterprise is not considered an SME if at least 25% of its share capital or voting rights are directly or indirectly controlled by one or more bodies or public entities, with the exception of cases mentioned at point 6 of art. 2 of the Regulation, respectively autonomous local authorities having an annual budget lower than the equivalent in ROL of EURO 10 million and less than 5,000 inhabitants. The Hunedoara Local Council holds 90% of the shareholders equity of SC PARC. The city of Hunedoara has 71,380 inhabitants according to the census from 2002, the planned budget of the Hunedoara Local Council for 2005 being of RON 25,023.45. Therefore, SC PARC is not an SME.

(11) The core business of SC PARC is represented by the „management of real estate based on tariffs or contract” (cod CAEN 7032). The company carries out activities specific to the management of an industrial park, as follows:

- realizing infrastructure of Parcul Industrial Hunedoara;

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<sup>6</sup> Total investments to date in the project amount ROL 22,098,510,262 and consist in realizing of almost entire infrastructure for 14 of the 26 land plots to be prepared;

<sup>7</sup> The partnership is between the Hunedoara Local Council (90% of equity) and the Hunedoara Steelwork Union (10% of equity);

<sup>8</sup> See ECJ Decision C-458/03 (13/10/05) Parking Brixen GmbH.

- providing utilities and services required for activities carried out by various companies located in the managed park;
- management of spaces and buildings of the industrial park;
- attracting investors to develop production activities and services.

The Hunedoara Industrial Park is located in the north of Hunedoara on a 19.3 ha. land. The land is in the private property of Hunedoara City Hall which assigned its management to SC PARC INDUSTRIAL SRL Hunedoara for 49 years, with an extension option. The Park was created to mitigate the shock determined by the massive personnel restructuring at SC SIDERURGICA SA Hunedoara (approximately 5,244 persons until the beginning of 2004) taking into consideration that Hunedoara was exclusively a steel sector city.

(12) The land was divided in 26 lots which at the end of the investments will provide access to all required facilities:

- electricity supply;
- telecommunications network;
- gas supply;
- water supply;
- installations for heating, ventilation and climate control;
- sewerage, including rain water;
- treatment of waste and waste water;
- roads connecting to the national road;
- inner access roads, parkings, and other industrial use facilities;
- public lighting;
- buildings within the industrial park.

For the good functioning of activity within the park, several buildings are to be erected on the land: administrative building, fire protection outlet, access booths, civil protection shelter, drinking water station. Investments realized for the constitution of the Hunedoara Industrial Park will be maintained during the entire existence of the park.

(13) The Hunedoara Industrial Park started its existence when the commercial company PARC INDUSTRIAL SRL Hunedoara received the park status by Order of the Minister of Development and Prognosis no. 90/31.03.2003. The park is situated in the West Development Region, being the only industrial park in the region. The access to the park is made from DN 68B national road in two points.

(14) As regards the competitors of the company, AVAS states that according to information provided by the Ministry of Administration and Interior the company faces competition from operators in other regions, however there are very few, if any, industrial business parks in the Western Development Region.

## **5. THE STATE AID CHARACTER OF THE FINANCIAL SUPPORT MEASURES INTENDED TO BE GRANTED TO THE COMPANY**

(15) The financial support measures intended to be granted to SC PARC may offer the company an advantage against its competitors and thus might distort the competition. The financial measures might constitute state aid within the meaning of art. 2 from Law no.

143/1999 on state aid, republished, and the Competition Council must assess their compatibility with a normal competitive environment.

(16) Analyzing the financial support measures, the Competition Council noted that there is no doubt these are financed from state resources, have a selective character, conferring an advantage to SC PARC and may affect trade with the member states of the European Union.

(17) In conclusion, the granted financial support measures are considered state aid and fall under Law no. 143/1999 on state aid, republished.

## **6. ASSESSMENT OF THE STATE AID MEASURES INTENDED TO BE GRANTED TO SC PARC INDUSTRIAL SRL Hunedoara**

(18) The state aid subject to the present decision is to complete infrastructure works in Parcul Industrial Hunedoara. Investments financed through the notified state aid are part from the investment project of SC PARC, insuring the coherence of the investment effort. Thus, previous investments amounting ROL 22,098,510,262 will be continued by investments partly financed by the proceeds arising from the sale of the shares held by AVAS in SC SIDERURGICA SA Hunedoara. By granting the notified state aid the local business and commercial infrastructure will be completed leading to the stimulation and regeneration thereby attracting companies to the local economy.

### **6.1. Assessing the state aid according to criteria of the Regulation on regional state aid**

(19) As provided in art. 23 (1) (f) of Law no. 143/1999 on state aid, republished, the Competition Council can authorize measures which constitute state aid in accordance with the Regulation on regional state aid (hereafter called Regulation) . Within the meaning of this regulation, the state aid can be granted for *initial investment* (Chapter II) or *for the creation of jobs* (Chapter III). In exceptional cases operating state aid can be granted (Chapter IV).

#### **6.1.1. Aid for initial investment**

(20) In this case the state aid is designed for initial investment, within the meaning of the provisions of Chapter II from the Regulation.

(21) Within the meaning of art. 5 from the Regulation, an initial investment is represented by the capital investment in connection with the creation of a new entity, the extension of an existing one or the launch of an activity implying a fundamental change in the product or the manufacturing process of an existing entity, by rationalization, diversification or modernization.

(22) In the analyzed case, the state aid intended to be granted is designed to complete the infrastructure works in Parcul Industrial Hunedoara, leading to the creation of new investments which have as finality the creation of some production facilities. The infrastructure works were launched in September 2004 and are expected to be completed in the first quarter of 2006. It is estimated that the project will generate 2,000 new jobs. The

total estimated cost of the project amounts ROL 95,796,347 thousand, broken down as follows:

| Table no. 1 |  | Estimated cost  | - ROL thousand - |
|-------------|--|---|------------------|
| No.         | Item description   | Amount (VAT excluded)   |                  |
|             | <b>ELIGIBLE COSTS</b>  |   |                  |
| 1           | <b>Administrative building, total</b><br><b>of which:</b><br>- building<br>- sanitary installations<br>- electrical installations<br>- thermal installations<br>- A/C/ ventilation installations<br>- equipments | <b>15,178,259</b><br><br>9,976,357<br>140,006<br>844,888<br>632,971<br>2,772,055<br>811,982 |                  |
| 2           | <b>Fire brigade outlet, total</b><br><b>of which:</b><br>- building<br>- sanitary installations<br>- electrical installations<br>- thermal installations<br>- equipments   | <b>2,550,337</b><br><br>1,976,927<br>130,115<br>206,454<br>131,529<br>105,312               |                  |
| 3           | <b>Access gate booth, total</b><br><b>of which:</b><br>- building<br>- sanitary installations<br>- sanitary installations<br>- equipments  | <b>454,409</b><br><br>340,368<br>8,654<br>79,439<br>25,948                                  |                  |
| 4           | <b>Civil protection shelter, total</b><br><b>of which:</b><br>- building<br>- ventilation installations  | <b>1,224,033</b><br><br>969,322<br>148,937<br>105,774                                       |                  |
| 5           | <b>Land preparation</b>  | <b>4,962,312</b>  |                  |
| 6           | <b>Drinking water duct</b>   | <b>1,674,045</b>  |                  |
| 7           | <b>Drinking water station, total</b><br><b>of which:</b><br>- building<br>- hydraulic installations<br>- electrical installations  | <b>3,033,026</b><br><br>2,002,696<br>912,047<br>118,283                                     |                  |
| 8           | <b>Water and sewerage networks inside the park, total</b><br><b>of which:</b><br>- water supply<br>- sewerage  | <b>10,720,899</b><br><br>1,313,216<br>9,407,683   |                  |
| 9           | <b>Public lighting, electric installations</b>   | <b>5,432,194</b>  |                  |
| 10          | <b>Natural gas installations, total</b><br><b>of which:</b>  | <b>557,826</b>  |                  |

|    |   |                    |
|----|---|--------------------|
|    | - natural gas supply installation;<br>- connection to the natural gas supply;<br>tuning station | 173,551<br>384,275 |
| 11 | <b>Roads</b>  | <b>25,494,376</b>  |
| 12 | <b>Surroundings and access gates</b>  | <b>9,577,184</b>   |
| 13 | <b>Electrical networks</b>  | <b>13,077,582</b>  |
|    | <b>NON ELIGIBLE COSTS</b>   |                    |
| 14 | Preparatory works   | 1,859,865          |
|    | <b>TOTAL</b>  | <b>95,796,347</b>  |

Source: AVAS notification

(23) The state aid is designed for new investments having as finality the creation of some production facilities (respectively infrastructure) which meet the characteristics provided by art. 5 of the Regulation in order to be considered aid for initial investment.

(24) The state aid does not have the purpose of replacing an existing investment designed to preserve the production potential or to financially restructure an enterprise in difficulty in accordance with the provisions of art. 5 (2) (a) and (b) of the Regulation.

(25) The Beneficiary of the state aid estimates that revenues brought in by the project in the first 9 years will be approximately RON 9,222 thousand with total operating expenses of RON 3,545 thousand. The estimated average annual turnover for 2006-2014 is RON 1,024.7 thousand and the average net profit estimated for the same period is RON 529,8 thousand. The figures above provide a positive indication of the economic and financial development of Parcul Industrial Hunedoara and implicitly the region.<sup>9</sup>

(26) Given the above it can be concluded that the finalization of the investments works in the industrial park will substantially contribute to the local development, both of the city of Hunedoara, as well as of the adjacent area, by the significant economic and business concentration. The concentration of economic activities in a certain area, valuing the local human and material resources does not disturb the competitive environment, but on the contrary contributes to its fostering.

### 6.1.2. Eligible costs

(27) In this case the rules regarding eligible costs for investments in tangible assets are applied.

(28) According to art. 6 (1) of the Regulation, the aid for initial investment is calculated as a percentage of the investment value. According to art. 6 (2) this value is set based on a set of

<sup>9</sup> The expected impact of the project in the region is as follows:

- diminishing of the shock due to the masive and successive personnel layoffs from SC SIDERURGICA SA Hunedoara by the partial absorption of the laid off staff;
- creating attractive conditions to carry out efficient economic activities;
- attracting SME-type investments to absorb the existing labor force in the city;

increasing the amount of domestic and foreign investments.

expenses corresponding to the investment elements, respectively land, buildings and equipments forming the standard base provided in annex no. 2 to the Regulation<sup>10</sup>.

(29) As presented in paragraph 22, table no. 1, out of the total value of the investment project the following costs are considered eligible: construction of the administrative building, construction of the fire brigade outlet, access gate booth and civil protection shelter, land preparation, surrounding of land and construction of access roads, construction of electrical networks and installations, construction of natural gas supply network, construction of infrastructure facilities for water supply.

(30) In the case of the infrastructure project in the Parcul Industrial Hunedoara, the total value of eligible costs is ROL 93,936,482,000 and represents investments in tangible assets required to complete infrastructure works of the industrial park (buildings, equipment, installations forming the standard base) meeting in this way the conditions imposed by art. 6 of the Regulation on regional state aid.

### **6.1.3. The contribution of the beneficiary**

(31) In order guarantee a viable and efficient level of the initial investments benefiting from aid, the contribution of the beneficiary to the their financing must be of at least 25% (art. 8 (1) of the Regulation on regional state aid). This minimum contribution of 25% can not be subject of a state aid (art. 8 (2) of the Regulation on regional state aid).

(32) According to information provided by AVAS the beneficiary of the state aid will contribute to the initial investment with ROL 59,439,759,481 representing 63.3% from the total eligible costs (ROL 93,936,482,000). This value is higher than the upper limit of 25% imposed through art. 8 of the Regulation.

### **6.1.4. State aid intensity**

(33) According to art. 9 of the Regulation, the gross intensity of the regional aid must not be higher than 50% of the net grant equivalent.

(34) The value of the notified state aid is ROL 14,963,169,519. Taking into consideration that the management company has already benefited from a state aid for the infrastructure of the park in amount of ROL 19,533,534,000 the total state aid will be of ROL 34,496,703,519 and the eligible costs of the project of ROL 93,936,482,000. The calculation shows an intensity of 36.7%, observing the criteria of art. 9 of the Regulation on regional state aid providing that the gross intensity of the regional aid can not be higher than 50% for large enterprises.

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<sup>10</sup> In the case of an acquisition, the costs of the three asset categories must be excluded from the standard base, with the condition the transaction takes place in market conditions. The value of the assets whose acquisition benefited already of an aid before their purchase will be deducted. In the case where the acquisition is accompanied by another initial investment, the expenses related to the latter are to be added to the acquisition costs.



### **6.1.5. Maintenance of the investment**

(35) According to art. 11 of the Regulation, the aid for initial investment must be conditioned, through the allocation method or through obtaining conditions, by the maintenance of the investment for a minimum period of five years.

(36) When granting the industrial park status, the Ministry of the Administration and Interior imposed the maintenance of the investment in the industrial park for a period of the 10 years. The assignment of the land lots in the park to investors is made for a period of 49 years. Thus, the condition provided by art. 11 of the Regulation on regional state aid to maintain the investment for a period of at least 5 years is met.

### **6.1.6. Cumulation**

(37) According to provisions of art. 16 of the Regulation on regional state aid, the 50% ceiling of the gross aid intensity is applied to the total aid, when the beneficiary receives in the same time aids within several regional schemes, irrespective of the fact that funds derive from local, regional, national or communitarian sources. As provided at point 6.1.4 of the present decision, this criteria has been fulfilled.

(38) AVAS and the Ministry of Administration and Interior (as grantors of the first state aid) will monitor the activity of SC PARC in order to ensure that the granted state aids, cumulated with state aids granted for the same objective within other schemes, do not go beyond the maximum allowed intensity of 50% provided by the Regulation.

## **7. CONCLUSIONS**

(39) Information presented in the notification submitted to the Competition Council leads to the conclusion that the state aid intended to be granted to SC PARC to complete infrastructure works in Parcul Industrial Hunedoara is not affecting significantly the normal competitive environment and does not infringe on the application of international treaties Romania is a part of.

(40) Subsequent to the performed analysis it has been noted that the state aid in total amount of ROL 14,963,169,519 consisting in the co-financing of infrastructure works in the Parcul Industrial Hunedoara, meets the granting criteria according to the Regulation on regional state aid, entered into force by Order of the President of the Competition Council no. 55/2004.

## **DECIDE**

**Art. 1.** The measure notified by the Authority for the Recovery of State Assets, having as beneficiary SC PARC INDUSTRIAL SRL Hunedoara, constitutes state aid within the meaning of art. 2 from Law no. 143/1999 on state aid, republished.

**Art. 2.** Based on art. 21 (2) (c) coupled with art. 23 (1) (f) from Law no. 143/1999 on state aid, republished, the regional development state aid to be granted to SC PARC

INDUSTRIAL SRL Hunedoara, is authorized conditioned by the observance of art. 3 and art. 4 from the present Decision.

**Art. 3.** The company commits to the maintenance of the investment for a minimum of 5 years, if otherwise the state aid will be recovered, according to the law.

**Art. 4.** The Authority for the Recovery of State Assets will follow that the aid granted to SC PARC INDUSTRIAL SRL Hunedoara does not surpass the maximum aid intensity provided by the regulations in force and the criteria for the cumulation of state aids for the same objective and beneficiary.

**Art. 5.** The maximum value of the state aid of which SC PARC INDUSTRIAL SRL Hunedoara can benefit to finalize the infrastructure works in Parcul Industrial Hunedoara is of ROL 14,963,169,519 (RON 1,496,317).

**Art. 6.** The present Decision becomes applicable at the date of its communication.

**Art. 7.** According to provisions of art. 32 from Law no.143/1999 on state aid, republished, the Authority for the Recovery of State Assets will submit annually to the Competition Council information regarding the state aid subject to the present Decision, in order to inventory the state aids.

**Art. 8.** According to provisions of art. 46 from Law no.143/1999 on state aid, republished, the present Decision can be appealed by interested parties to the Court of Appeals Bucuresti, the Administrative Litigation Section within 30 days from its communication.

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

- Autoritatii pentru Valorificarea Activelor Statului, str. Cpt. Av. Alexandru Serbanescu, nr. 50, sector 1, Bucuresti;
- SC PARC INDUSTRIAL SA Hunedoara, str. Libertatii nr. 17, Hunedoara, Judetul Hunedoara.

**PRESIDENT**

**MIHAI BERINDE**