

## **DECISION OF THE COMPETITION COUNCIL**

**NO 116 of 18.05.2006**

**ON RESCUE AID FOR National Company of Coal S.A. Ploiesti**

### **COMPETITION COUNCIL,**

With regard to the provisions of the Europe 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 Official Gazette, Part I, no. 73 of 12.04.1993,

With regard to the provisions of the Competition Law no. 21/1996, republished in the Official Journal of Romania, Part I, no. 742 of 16 August 2005,

With regard to the provisions of the Law no. 143/1999 on state aid, republished in the Official Journal of Romania, Part I, no. 744 of 16 August 2005,

With regard to the provisions of the Regulation on the form, content and other details regarding the state aid notification, published in the Official Gazette, Part I, no. 82, of 25.01.2005,

With regard to the provisions of the Regulation on State aid for rescuing and restructuring firms in difficulty, published in the Official Journal of Romania, Part I, no. 1215 of 17 December 2004,

With regard to the provisions of the Guidelines regarding the qualification of an enterprise as a SME, published in the Official Gazette, Part I, no. 314, of 14.04.2005,

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

**Based on the following,**

### **1. PROCEDURE**

- (1) By address no. 160677 of 21.03.2006, registered at the Competition Council with no. RS-AS 52 of 21.03.2006, the Ministry of Economy and Commerce (hereinafter MEC) notified, based on art. 15 of the Law no. 143/1999 on State aid, republished, the aid measures intended to be granted to the National Company of Coal S.A. Ploiesti (hereinafter SNCP SA) as individual rescue aid.
- (2) Since the information submitted was not complete and accurate, the Competition Council requested to MEC further information by letter no. DAAS/533/29.03.2006. MEC submitted its answers to the requested information by letter no. 160.764/05.04.2006, registered at the Competition Council with no. RG 3060/05.04.2006.
- (3) The notification became effective when the information was precise and complete, respectively on 06.04.2006.

## **2. DESCRIPTION OF THE MEASURE**

### **2.1. Beneficiary**

- (4) In 1997, by GD no. 575/1997 was established the SNCP SA with a capital of RON 39,170,000, through the reorganization of the Regie Autonomous of Coal Ploiesti, which was dissolved.
- (5) SNCP SA is a joint stock *company*, with entirely state owned capital, with headquarter in Ploiesti, Prahova County, having 1193 employees at the end of 2005, *registered at the Trade Register under no. J29/1463/1997* and fiscal identification code CUI: 9993340.
- (6) SNCP SA exploits through quarries and through specific underground works the lignite reserves quartered in the sub-Carpathian area. Among its secondary activities, there are: preserving the mines from the moment when their activity ceased until contracting the closing works, demolishing the constructions, the embankment and organizing the yard, the drilling and boring works for constructions.
- (7) SNCP SA has on the internal market a share of 7%. The main competitors and their market shares are: SC Energetic Complex Rovinari SA (20%), SC Energetic Complex Turceni SA (20%), SC Energetic Complex Craiova SA (2%) and National Company of Lignite Oltenia (51%).
- (8) SNCP SA are three branches, respectively: SC Carbonifera SA Ploiesti, SC Lignitul SA Ploiesti, SC Salajul SA Sarvasag. These mining subunits carry out their activity in mono-industrial areas, without alternatives for employment.

- (9) SNCP SA recorded during 2003-2005 the following evolutions of the main accounting financial indicators:

**Table no.1 Evolution of the main economic-financial indicators of the undertaking for the period 2003-2005**

- thousand RON-

INDICATOR	2003	2004	2005
Turnover	156,094	138,773	106,289
Result of the exercise	-62,467	-50,412	-44,424
Own capitals	-222,724	-273,135	-317,559

*Source: Notification form*

As it results from the data presented in table no.1, the undertaking recorded losses during the period analyzed and negative own capitals. Thus, it can be observed that during the analyzed period the undertaking confronts severe financial difficulties.

- (10) Among the causes that determined the difficult economic-financial situation we can find the following:
- low technological performance of equipments, installations and transportation means due to outdated and obsolete assets;
  - the revenues obtained cover only a part of production costs;
  - lack of liquidities.

## **2.2. The financial measure**

- (11) Considering that the undertaking is in financial difficulty, and it doesn't have liquidities to pay the debts to the state budget, the state decided to grant SNCP SA a financial support until the finalization of a restructuring/liquidation plan. This will be granted in accordance with *G.E.O. no. 8/2006 regarding the approval of some financial measures for the economic operators under the supervision of the Ministry of Economy and Commerce for 2005* and it consists in stay of payment (for six months) in order to be exempted of overdue taxes for 2005, as well as of the related interest and penalties; in amount of RON 13,997,132, as it follows:

**Table no. 2 – The debt and related accessories of SNCP SA**

RON thousand

	Debt	Accessories <sup>1</sup>	Total facilities
Contributions social	7,496,067	623,797	8,119,864

<sup>1</sup>Debts and related accessories will be stayed of payment from the date of issue of a decision by the Competition Council. Accessories are calculated until the date of stay of payment.

insurance			
Contributions health insurance fund	2,155,719	179,391	2,335,110
Contributions unemployment fund	908,568	75,608	984,176
Mining royalty	959,111	79,814	1,038,925
Contributions labour accidents insurance	897.658	74,700	972,358
Exploitation taxes	62,923	5,236	68,159
VAT	96,371	8,020	104,391
Contributions disabled people fund	345,406	28,743	374,149
<b>TOTAL</b>	<b>12,921,823</b>	<b>1,075,309</b>	<b>13,997,132</b>

*Source: Notification form*

### 3. ASSESMENT OF THE STATE AID

#### 3.1. Existence of State Aid

- (12) The criteria on which it is established whether a measure represents state aid are foreseen in art 2 (1) of the *Law no.143/1999 regarding state aid*, republished. Thus, state aid is any measure of support from the State or from the local administrative authorities, or from the resources of the State or of the local administrative authorities, regardless of its form, that distorts or threatens to distort competition, through favouring certain undertakings, the production of certain goods or the provision of certain services or affects the trade between Romania and the Member States of the European Union, being considered incompatible with a normal competition environment.
- (13) By granting the financial support the State renounces to obtain certain revenues, therefore the State's own resources are involved. This is granted to a certain undertaking, respectively SNCP SA, thus having a selective character. The granting of facilities will have a positive effect on the economic-financial indicators of the undertaking, especially on the cash flow. Thus, the undertaking will benefit from an advantage since it is favoured compared to its competitors. The notified financial support measure will affect the trade between Romania and the Member States of the European Union since the products provided by SNCP SA could compete with other similar products manufactured by undertakings from the European Union.

Therefore, the financial support intended to be granted to SNCP SA constitutes State aid and it is subject to *Law no. 143/1999 regarding state aid*, republished.

#### 3.2. State aid compatibility

- (14) According to Article 2 from Law no.143/1999 on State aid, republished, the aid granted by the State or through State resources that distort or threaten to distort competition and affect the trade between Romania and the Member States of the European Union is incompatible with the normal competitive environment. Nevertheless, certain state aid can be considered as compatible and can be authorised by the Competition Council, if it complies with the criteria provided in the Competition Council's regulations and guidelines.
- (15) By analyzing the main economic-financial indicators it is proved the fact that the undertaking had serious financial difficulties during 2003 – 2005. According to the information provided in the notification, the state aid is granted in order to maintain the undertaking's short term activity for extracting and processing the lignite, until a restructuring plan of SNCP SA is presented. As a consequence, the assessment of the aid compatibility is done in accordance with the authorization criteria settled by the Regulation on state aid for rescuing and restructuring firms in difficulty, applied through the Competition Council's Order no. 501/23.11.2004, published in the Official Gazette no.1215/17.12.2004 (hereinafter Regulation). The Competition Council considers that no other Regulation can be applied in this case, the grantor did not mention any other derogation from the normal rules in the field.

Undertaking's eligibility. Firm in difficulty and the undertaking's affiliation to a group

- (16) In accordance with Article 2 (3) of the Regulation on State aid for rescue and restructuring firms in difficulty, a company is considered in difficulty when registers losses, negative own capital and the turnover decreases.
- (17) As shown in table no.1, during 2003-2005, the undertaking confronts severe financial difficulties. Thus, the Competition Council considers that the criteria foreseen under Art. 2 of the Regulation on State aid for rescue and restructuring firms in difficulty are met in order for the company to qualify as a "firm in difficulty".
- (18) According to the Regulation, a company belonging to or being taken over by a larger business group is not normally eligible for rescue and restructuring aid, except where it can be demonstrated that the firm's difficulties are intrinsic and are not the result of an arbitrary allocation of costs within the group, and that the difficulties are too serious to be dealt with by the group itself.
- (19) The undertaking is not belonging to a group and therefore is eligible to receive rescue aid.

Conditions for authorising a rescue aid, stipulated in Article 8 (1) of the Regulation

- (20) Normally, the rescue aid must consist of liquidity support in the form of loan guarantees or loans and temporary in duration; any loan must be reimbursed and any

guarantee must come to an end within a period of not more than six months after the disbursement of the first instalment to the undertaking.

- (21) In the case of SNCP SA, the aid is not in such a form, i.e. it comprises stay of payment in order to be exempted of overdue debts to the State budget; nevertheless, the Competition Council considers that this support is equivalent to the form required by the Regulation, thereby satisfying the reversibility criterion.
- (22) According to the provisions of Article 8 (1) (c) of the Regulation, the rescue aid must be accompanied, on notification, by a commitment given by the grantor to submit to the Competition Council, no later than 6 months after the rescue aid measure has been authorised, a restructuring plan or a liquidation plan or the proof that the loan has been reimbursed in full and/or that the guarantee has been terminated.
- (23) According to the information presented in the notification, the grantor committed to present a restructuring plan or a liquidation plan of the undertaking within 6 months from the authorisation of the rescue aid. In the restructuring scenario the privatisation of the company is envisaged if a potential investor for buying the majority share package can be found, and the rescue aid will be a part of the restructuring plan. In any event, if a restructuring plan is not submitted by the grantor during the 6 months period provided at para.(22), the state will claim back the debts stayed of payment and the related penalties, representing an amount equal to or equivalent to the rescue aid, thus all prior debts shall become due.
- (24) The analyzed aid is in line with Article 8 (1) (b) of the Regulation, according to which the rescue aid must be justified on the grounds of serious social difficulties and must not have unduly effects on the competitive environment. In fact, if the undertaking ceased its operations this would have serious consequences in terms of unemployment in the areas where the undertaking has working points, as all the counties where the undertaking has mining exploitations confront already with a high level of unemployment, as a consequence of closing of other mining exploitations. Thus, in case of liquidation of the undertaking, the level of unemployment in Salaj county would increase from 6.4% to 7.1%, in Campulung Muscel from 17.8% to 41.6% and in Baraolt from 29.7% to 74%. Taking into account that mining represents the main subsistence source for the inhabitants of that area, the undertaking's bankruptcy would generate an ingravescence of the social problems, due to the lack of perspective in finding a job.
- (25) The Ministry of Economy and Commerce notified to the Competition Council a State aid in amount of RON 13,997,132, considered to be limited to the minimum necessary for maintaining the undertaking activity for a period of 6 months, as it is stipulated under art.8 paragraph (1) letter d) of the Regulation. This amount reflects the undertaking's need of liquidities and it was calculated based on the necessary of cash-flow from 2005. Based on the result of the formula in the Annex to the Regulation (respectively RON - 48,064,313) the maximum amount of aid which can be granted is RON 13,997,132. The Competition Council finds that the value of the

rescue aid is less than the result of applying the formula provided in the Annex, and thus the rescue aid intended to be granted to the undertaking is limited to the minimum necessary, in order to maintain the undertaking in the business for a limited period of time, respectively 6 months.

- (26) The Competition Council notices that, based on the facts presented at paragraph (27), the rescue aid in value of RON 13,997,132 represents the minimum necessary for the undertaking's survival for a short period of time, in order to analyze the circumstances that led to the difficulties that the undertaking is confronting in order to elaborate a restructuring plan for remedying these.
- (27) According to the information submitted by Ministry of Economy and Commerce, it results that the undertaking has not benefited before of state aid for rescuing or restructuring. As a consequence, the notified aid complies with the "one time, last time" principle, as set out in Article 8 (1) e) of the Regulation.

## **DECIDES**

**Art. 1.** The financial support measure intended to be granted to the undertaking represents State aid according to Article 2 (1) of the *Law no. 143/1999 on State aid*, republished.

**Art. 2.** Based on the provisions of Article 21 (2) (c) corroborated with Article 23 (1) (e) of the *Law no. 143/1999 on state aid*, republished, the rescue aid for National Company of Coal S.A. Ploiesti is authorized with the condition to observe the provisions of Article 3 of the present Decision.

**Art. 3.** The Ministry of Economy and Commerce must submit to the Competition Council the company's restructuring or liquidation plan, within 6 months from the date of issuance of the present Decision.

**Art. 4.** If the condition imposed by the present decision is not observed, the provisions of Article 22 of the *Law no. 143/1999 on State aid*, republished shall apply.

**Art. 5.** The amount of the State aid intended to be granted is of RON 13,997,132.

**Art. 6.** The present decision becomes applicable as of its date of communication.

**Art. 7.** In accordance with the provisions of Article 32 of the *Law no. 143/1999 on State aid*, republished, the Ministry of Economy and Commerce shall submit to the

Competition Council information on the State aid granted in order to be inventoried and monitored.

**Art. 8.** Pursuant to Art. 46 of *Law 143/1999 on State aid*, republished, this decision may be appealed by the interested persons at the Bucharest Court of Appeal, administrative section, within 30 days from its communication.

**Art. 9.** The present decision shall be communicated by the Secretary General of the Competition Council to:

- The Ministry of Economy and Commerce, Calea Victoriei nr.152, sector 1 Bucharest;
- National Company of Coal S.A. Ploiesti., Strada Bobalna, nr. 2, Ploiesti, Jud. Prahova.