

## **DECISION OF THE COMPETITION COUNCIL**

**No 117 of 16.05.2006**

**concerning the rescue aid for  
National Company of Lignite Oltenia S.A.**

### **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 no. 742, Part I, of 16.08.2005

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

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 rescue and restructuring firms in difficulty, published in the Official Gazette, Part I, no. 1215, of 17.12.2004,

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

**Based on the following,**

### **1. PROCEDURE**

- (1)** By letter no. 160662/17.03.2006, filed with the Competition Council no. RS-AS no.45/16.03.2006, the Ministry of Economy and Commerce (MEC) has notified

based on art. 15 of *Law no. 143/1999 on state aid, republished*, the state aid measures intended to be granted to the National Company of Lignite Oltenia S.A (SNLO 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/532/29.03.2006. MEC sent its answers to the requested information by letter no. 160.742/03.04.2006.
- (3) The notification became effective when the information was accurate and complete, respectively on 10.04.2006.

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

### ***2.1. The Beneficiary***

- (4) In 1997, the National Company of Lignite Oltenia SA (SNLO SA) was set up by GD no. 576/1997. SNLO SA had 5 mines, 7 quarry exploitations, 1 mixed exploitation and 11 interfacing units. In 2004, by GD no. 103/2004, within the restructuring process, the parent company has been divided in the Company for Mine Closing SA Tg-Jiu and National Company of Lignite Oltenia SA (SNLO SA). This measure had as main objective the maintaining of activities that could become viable. In this context, SNLO SA took over the main business of the company, respectively extraction and preparation of lignite - code CAEN 1020.
- (5) SNLO SA. is a joint-stock company, with entirely state owned capital, with headquarters in Targu Jiu, county Gorj, being registered at the Trade Register under no.: J18/263/2004 and fiscal identification code: R16306589.
- (6) SNLO SA produces energetic lignite with a calorific power [ $Q_i$ ] between 1,650 – 1,950 Kcal/Kg, humidity [ $W_{it}$ ] - 42%, anhydride [ $A_{anh}$ ] – 36.5%. SNLO SA carries out its activity by coordinating a number of 3 mining quarry exploitations, 1 mixed exploitation –underground and quarry, 1 underground exploitation, 1 independent sector Albeni, 2 bases for supplying, transport and services, a unit for assets capitalization and a centre for recovery and improvement of labour force. The company's lignite production is achieved underground in proportion of 9.87 % and 90.13% in quarries.
- (7) In 2001, CNLO owned a share of 51% on the domestic market of lignite. The main competitors and their respective market shares are the following: SC Energetic Complex Rovinari SA (20%), SC Energetic Complex Turceni SA (20%), SC Energetic Complex Craiova SA (2%) and the National Company of Coal Ploiesti (7%).

- (8) The mining exploitations of the company are placed in Gorj, Mehedinti and Valcea counties, respectively in the development region South-West, considered as assisted area in accordance with the provisions of art.87 (3) (a) of the EC Treaty. Moreover, those areas in which the mining exploitation exist are mono-industrial areas, and the level of unemployment is very high.
- (9) CNLO SA had the following evolution of the main accounting financial indicators between 2000-2001:

Table no.1 Evolution of the main economic-financial indicators of the undertaking for the period between 2000-2001

- RON-		
INDICATOR	2000	2001
Turnover	636,124,330	876,814,335
Result of the exercise	-239,620,469	-15,089
Equity capital	-40,383,498	-62,679,125

*Source: Notification form*

As it results from the data presented in table no.1, the undertaking registered losses and negative equity during the period analyzed. Thus, it can be observed that in the analyzed years the undertaking had serious financial problems.

- (10) Among the causes that generated the difficult economic-financial situation we can find the following:
- low technological efficiency of equipment, installations and transportation means since they are worn out and obsolete;
  - the revenues obtained from the selling of the lignite cover only partially the production costs;
  - lack of cash flows.

## ***2.2. The financial measure***

- (11) Considering that the undertaking is in a difficult economic-financial situation, by not having liquidities to pay debts to the state budget, the grantor decided to grant financial aid in order to maintain the undertaking in the economic circuit until a restructuring/ liquidation plan is finalised. This aid will be granted in accordance with *G.E.O. no. 8/2006 regarding the approval of some financial measures for the economic agents under the supervision of the Ministry of Economy and Commerce for 2005* and consists in stay of payment (for 6 month) in order to be exempted of overdue taxes for 2005, as well as of the related interest and penalties; in amount of RON 80,688.727, as follows:

Tabel no. 2 *The debt and related accessories of SNLO*

	thousand RON		
	Debit	Accessories <sup>1</sup>	Total facilities
Contributions social insurance	4,589.365	544.807	5,134.172
Contributions health insurance	1,319.720	156.727	1,476.447
Contributions unemployment insurance	564.952	66.722	631.674
Mining royalty	8,339.196	1,522.566	9,861.762
Contributions social insurance- work accidents	556.624	52.880	609.504
Exploitation taxes	236.335	27.887	264.222
VAT	52,366.718	10,237.112	62,603.830
Fund for disabled people	98.087	11.029	107.116
<b>TOTAL</b>	<b>68,068.997</b>	<b>12,619.730</b>	<b>80,688.727</b>

Source: Notification form

### 3. ASSESSMENT

#### 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, namely SNLO SA, thus having a selective character. The granting of exemptions will have a positive effect on the economic-financial indicators of the undertaking, especially on the cash flow. Therefore, 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 SNLO SA could compete with other similar products manufactured by undertakings from the European Union.

<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.

- (14) Therefore, the financial support intended to be granted to SNLO SA constitutes state aid and is subject to *Law no. 143/1999 regarding state aid*, republished.

***State aid compatibility***

- (15) According to Article 2 from Law no.143/1999 on State aid, republished, the aid granted by the State or from State resources that distorts or threatens to distort competition and that affects the trade with the Member States 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 granting of this aid is made by taking into account certain criteria provided in the Competition Council's regulations and guidelines.
- (16) By analyzing the main economic-financial indicators of CNLO SA it is proved the fact that the between 2001-2002 the undertaking had serious financial difficulties which led to the initiation of some restructuring measures, among which some were organisational, starting with 2002. One of the organisational measures aimed at the maintaining of that part of the undertaking that could become profitable, respectively SNLO SA.
- (17) According to the information provided in the notification, the state aid is granted to SNLO SA in order to maintain the undertaking's short term activity of extraction and processing of lignite, until a restructuring plan is presented. As a consequence, the analysis of state aid compatibility will be made according to the authorisation criteria of a rescue aid, stipulated in the Regulation on state aid for rescue 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 the Regulation). The Competition Council considers that no other Regulation can be applied in this case; the grantor did not invoke any other derogation from the normal rules in the field.

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

- (18) 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.
- (19) As shown in table no.1, during 2000-2001, the undertaking has serious 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".

- (20) 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.
- (21) The company does not belong to a group and therefore is eligible to receive rescue aid.

Conditions for authorising a State aid for rescuing and restructuring, stipulated in art. 8 (1) of the Regulation

- (22) 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 firm.
- (23) In the case of SNLO, 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.
- (24) According to the provisions of Article 8 (1) (c) of the Regulation, the rescue aid must be accompanied, on notification, by an undertaking 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. If a restructuring plan is not submitted by the grantor during the 6 months period provided, the state will claim back the debts written off and the related penalties.
- (25) According to the information presented in the notification, the grantor committed to present a restructuring plan or a liquidation plan of the company, within 6 months from the authorisation of the rescue aid. In the restructuring scenario a privatisation of the company is envisaged if a potential investor 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.(24), 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.
- (26) The rescue aid is in line with Article 8 (1) (b) of the Regulation, warranted on the grounds of serious social difficulties and has no unduly effects on the competitive environment. In fact, if the company will cease its operations this would have serious

consequences in terms of employment in areas where the company has working units and taking into consideration that in the areas where the company has mining exploitations it confronts already with a high unemployment level following the closure of certain mines. Thus, in case the company is winding up, the level of unemployment in the Gorj County will increase from 10.6% to 14.9%, in Mehedinți County from 10% to 10.94% and in Valcea County it will reach 8.28% compared to 7.6%. 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 new job.

(27) The Ministry of Economy and Commerce notified to the Competition Council an aid in amount of RON 80,688.727 thousand, considered to be limited to the minimum necessary in order to maintain the undertaking's activity for a period of 6 months, as stipulated in art.8.(1) d) of the Regulation. This amount shows the undertaking's need for liquidities and it was calculated on the basis of the necessary cash-flow in 2005. It was also taken into consideration the maximum value of the rescue aid from which the undertaking can benefit, calculated according to the formula provided in the annex to the Regulation, respectively RON 39,204 thousand. The Competition Council considers that the value of the rescue aid exceeds the result obtained if applying the formula provided in the annex. The grantor justifies it in the following way:

- on 31.03.2006, the company registers claims in amount of RON 272,877.9 thousands that are with RON 45,9907.9 lower than the beginning of the year.
- At present, for the overdue obligations ANAF garnished bank account; also, on the basis of the Code for Financial Procedure, SNLO requested the suspension of garnishment, ANAF disposing the suspension of the execution for a period of 3 months;
- if the total aid is not granted for rescue, the enforcement through garnishment will be pended and will have as an effect the blocking of SNLO's activity, and that of the undertakings whose activity is related to that of SNLO; the impossibility of providing coal to the thermal power stations and the social negative effects of vast proportions.

Moreover, the grantor states that the undertaking paid, up until now, 69% of the due obligations in 2005, representing the maximum amount that could be paid according to the existing available assets. Thus, from the total amount of due obligations to be paid of RON 68,068.997 thousand to which afferent accessories are added in amount of RON 12,619.730 thousand.

(28) On the basis of those presented in paragraph (28), the Competition Council notes that the rescue aid in amount of RON 80,688.727 thousand represents the minimum necessary for the undertaking to survive for a short period of time, respectively 6 months, in view of analysing the circumstances that led to the financial difficulties to the undertaking confronted with in order to elaborate a plan which will allow the reconstruction.

- (29) The Ministry of Economy and Commerce confirm that, the undertaking has not benefited before of state aid for rescuing and restructuring. Therefore, 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) letter c) corroborated with art. 23 (1) e) of the Law no. 143/1999 on state aid, republished, the rescue aid to be granted to the National Company of Lignite Oltenia SA., is authorised 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 80,688,727.

**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 inventory and monitor.

**Art. 8.** In accordance with article 46 of the Law no. 143/1999 on State aid, republished the present decision can be appealed by interested parties at the Bucharest Court of Appeal, the Administrative Litigation 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 Lignite Oltenia S.A., Street T. Vladimirescu, no. 1-15, Tg-Jiu, Jud. Gorj.



