

DECISION OF THE COMPETITION COUNCIL
No. 118 of 16.05.2006
concerning the rescue aid intended to be granted to
Societatea Nationala a Sarii SA

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

Based on the following grounds,

1. PROCEDURE

(1) By letter no.160646/15.03.2006, filed with the Competition Council no. RS-AS 46/16.03.2006, the Ministry of Economy and Commerce (hereinafter named MEC) notified, based on art. 15 of Law no. 143/1999 on state aid, republished, the individual rescue state aid measures intended to be granted to Societatea Nationala a Sarii SA (hereinafter named SNS).

(2) Within the working meeting from March 22 2006 at MEC headquarter, Competition Council requested to MEC further information in order to fill up the notification form. The information was submitted by letter no. 160779/06.04.2006 registered at the Competition Council by no. RG/3126/06.04.2006, respectively no. 160826/14.04.2006 registered at the Competition Council by no. RG/3428/14.04.2006.

(3) The notification became effective on 14.04.2006.

2. FACTS DESCRIPTION

2.1. The beneficiary – SNS

(4) The state aid beneficiary is SNS¹. This company rises from Division of Salt and Non - metal bearing Bucharest (Centrala Sarii si Nemetaliferelor Bucuresti), which was transformed in 1990 in Régie Autonome of Salt in accordance with the provisions of the Law no.15/1990 and of G.D. no.1286/1990. The company has an equity capital of RON 40,936,410, divided in 4,093,641 shares totally owned by the Romanian state through MEC.

(5) The company is active in extraction industry and its main object of activity is salt extraction (NACE code 1440). SNS also undertakes activities of extraction of chalky stone (NACE code 1422), as well as other extraction activities (NACE code 1450).

(6) The main products made by SNS are:

- salt (rock salt, salt solution, re crystallized salt, salt based products);
- chalkstone;
- feldspar;
- natural graphite;
- cat silver.

(7) [...]*

(8) SNS has 7 units in its structure, having a branch status, without legal personality, as following: Exploatarea Miniera Ramnicu Valcea, Salina Slanic, Salina Ocna Dej, Salina Ocna Mures, Salina Targu Ocna, Salina Praid si Salina Cacica. These are located in the following counties: Alba, Bacau, Gorj, Harghita, Prahova, Suceava, Valcea, situated in the development regions Centre, North-East, South-West Oltenia and South Muntenia, which are considered assisted areas in accordance with the provisions of art.87(3) (a) of the EC Treaty. The areas in which the SNS branches are located, except for Bucharest where the company' s headquarter is situated, are mono industrial areas where the main income source of the inhabitants is SNS mining exploitations.

(9) At the end of 2005 SNS had 2,208 employees and a turnover of RON 168.2 million, thus being a large enterprise.

(10) [...]*

(11) 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 technical accident in Exploitation Field II Ocnele Mari, county of Valcea, imposed some measures to be taken, that caused important financial efforts to pay

¹ The company is registered at the Trade Register under no. J40/2906/1998, CUI: 1590430 fiscal attribute R, headquarters in: Bucuresti, sector 1, Calea Victoriei nr. 220;

* confidential data

* confidential data

- damages to the inhabitants affected, to make environmental protection works, to make stable the entire area and to rehabilitate the natural frame;
- the internal market restraint in the last years due to the decline of the chlorine salty products industry, that determined the decrease of the salt solution production;
- the increase of prices at raw materials, materials, fuels and electric energy, elements with a big weight in the operational costs.

2.2. The financial measure

(12) Considering that the company is in a difficult economic-financial situation, by not having liquidities to pay debts to the state budget for 2005, the supplier decided to grant SNS a financial support. 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 authority of the Ministry of Economy and Trade for 2005* and consists 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; the total amount of facilities is of RON 3,225,439, as it follows:

Table no. 2 The debt and related accessories of SNS

- RON -

	Exemption	Debit	Accessories²	Total facilities
1.	Social insurance contributions	1,336,213	168,363	1,504,576
2.	Social insurance for health contributions	393,964	49,639	443,603
3.	Unemployment insurance contributions	168,402	21,219	189,621
4.	Social insurance contributions - 0,5% professional diseases and work accidents	115,201	14,515	129,716
5.	Health contributions for medical inactivity	2,611	329	2,940
6.	Fund for disabled people	28,210	3,554	31,764
7.	Tax on health harmful activity	82	10	92
8.	VAT	819,828	103,298	923,126
	TOTAL	2,864,511	360,928	3,225,439

Source: Notification form

3. ASSESMENT OF THE STATE AID MEASURE

3.1. Existence of State Aid

(13) The criteria on which it is established whether a measure represents state aid are foreseen in article 2(1) of the *Law no.143/1999 on 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, in any form whatsoever which distorts or threatens to distort competition by favoring certain undertakings, the production of certain goods

²Debts 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.

or the provision of certain services is, insofar as it affects trade between Romania and the Member States of the European Union, thus being incompatible with a normal competition environment.

(14) By granting the financial support the State renounces to obtaining certain revenues, therefore the State's own resources are involved. The financial measures granted in accordance with the provisions of *G.E.O. no. 8/2006 regarding the approval of some financial measures for the economic operators under the authority of the Ministry of Economy and Trade*, address only to the 12 companies named in the Annex of this normative act, SNS being one of them. Thus, the financial support granted to this company has a selective character. Granting 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 favored compared to its competitors. At the same time, there is no doubt that the financial support granted to SNS could affect the trade between Romania and the Member States of the European Union since the products provided by SNS could compete with other similar products manufactured in the European Union

(15) Therefore, the financial support intended to be granted to SNS is State aid and is subject to the *Law no. 143/1999 on state aid*, republished.

3.2. State aid compatibility

(16) According to Article 2 of the *Law no.143/1999 on State aid*, republished, the state aid granted by state or through state resources which distorts or threatens to distort competition and 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 authorized by the Competition Council, if complies with the criteria provided in the Competition Council's regulations and guidelines.

(17) By analyzing the main economic-financial indicators of SNS it is proved the fact that the undertaking has serious financial difficulties; according to the information provided in the notification form, the state aid is granted in order to maintain the undertaking's short term activity, until a restructuring or a liquidation plan is presented. As a consequence, the assessment of the aid compatibility is done in accordance with the authorization criteria set by 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 named Regulation). The Competition Council considers that no other state aid rules 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

(18) Article 2 (3) of the Regulation lays down that a company is regarded as being in economic – financial difficulty if the common features of a firm in difficulty are met: increase of losses, decrease of turnover, increase of stock, decrease of cash flow, increase of debts, increase of financial burden and decrease or disappearance of the net asset value.

(19) [...]*

(20) According to the provisions of 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) SNS is an entirely state owned company and does not belong to a group and therefore it is eligible to receive rescue aid.

Conditions for authorizing a rescue aid, stipulated in Article 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 installment to the firm.

(23) In the case of SNS, 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 authorized, 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.

(25) According to the information provided in the notification form, the grantor committed to present a restructuring plan or a liquidation plan of SNS within 6 months from the authorization of the rescue aid. In the restructuring scenario a privatization 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 undue effects on the competitive environment. In fact, if SNS ends its activities, this would have serious consequences in terms of employment in the areas where the company's branches are located given that these areas already confront a higher unemployment rate than the national average rate. According to the information in the notification form, the incomes obtained by the 2,208 employees of the company are used to support other 6,650 people, members of their families. Taking into account that mining is the main subsistence source for the inhabitants of the area, the company's bankruptcy would

* confidential data

generate an ingravescence of the social problems, due to the lack of perspective in finding a new job. Moreover, taking into account the low market share of the company on the European market (under 1%), the Competition Council finds that the aid will not create unacceptable negative effects on the competitive environment and on the trade with the Member States.

(27) According to Article 8 (1) (d) of the Regulation, the rescue aid must be restricted to the amount needed to keep the firm in business for the period during which the aid is authorized. Applying the formula set out in the Annex of the Regulation to the data provided by the grantor, resulted that the maximum of liquidities needed by the company to maintain its activity for 6 months is of RON 5,706,900.

(28) Taking into account the above mentioned, it is considered that the state aid notified, in amount of RON 3,225,439, intended to be granted to SNS is limited to the minimum necessary, according to the provisions of Article 8 (1) (d) of the Regulation.

(29) According to the information submitted by the Ministry of Economy and Trade, SNS did not benefit before from state aid for rescue 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 Societatea Nationala a Sarii SA is 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 Societatea Nationala a Sarii SA is authorized under the condition to observe the provisions of Article 3 of the present Decision.

Art. 3. The Ministry of Economy and Trade 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 3,225,439.

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 Trade 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, the present 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 General Secretary of the Competition Council to:

- The Ministry of Economy and Trade, Calea Victoriei nr.152, sector 1 Bucharest;
- Societatea Nationala a Sarii SA, Calea Victoriei nr. 220, sector 1 Bucharest.

PRESIDENT

MIHAI BERINDE