

DECISION

No 124 of 24.05.2006

regarding the state aid scheme contained by the Draft Decision of the Selection Committee of the Environmental Fund for the approval of the Project on recycling of tyres

THE COMPETITION COUNCIL,

Having 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 the Law no. 20/1993, published in the Official Journal, no. 73 of 12 April 1993,

Having 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,

Having 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,

Having regard to the Regulation regarding the regional State aid, published in the Official Journal of Romania, Part I, no. 340 of 19 April 2004, with the subsequent amendments and completions, issued in the application of the Law no. 143/1999 on state aid, republished,

Having regard to the Regulation regarding the state aid for small and medium size enterprises, published in the Official Journal of Romania no. 340 of 19 April 2004, issued in the application of the Law no. 143/1999 on state aid, republished,

Having regard to the Decree no. 57/2004 regarding the appointment of the members of the Competition Council's Plenum,

Based on the following considerations,

1. PROCEDURE

(1) By address AFM no. 3.316/29.03.2006, registered at the Competition Council with the no. RS-AS 56/30.03.2006, the Ministry of Environment and Water Management - the Administration of the Environmental Fund - notified the Project on recycling of tyres, hereinafter named the Project, according to Art. 15 of the Law no. 143/1999 on state aid, republished¹. The notification became effective on 20.04.2006.

2. LEGAL BASE

(2) The Administration of the Environmental Fund notified the Project based on recycling of tyres based on the Draft Decision of the Selection Committee approving the Project².

3. DESCRIPTION OF THE FINANCIAL SUPPORT MEASURES

3.1. Objective of the scheme

(3) By the Project notified, grants are to be made from the Environmental Fund to invest in tyre recycling installations to comply with the commitments made by Romania in the field of waste management through Romania's Accession Treaty to the European Union and by the National Plan for waste management.

3.2. Beneficiaries

(4) Beneficiaries to be financially supported from the Environmental Fund within the Project are undertakings whose projects are selected by the Administration of the Environmental Fund, based on criteria provisioned in the Environmental Handbook.

(5) In accordance with the Handbook of the Environmental Fund, the undertakings requesting financing must submit the projects within the submission sessions advertised by the Administration of the Environmental Fund. The assessment and selection criteria of the projects are mentioned in the Operating Handbook. Based on these selection criteria, the Ascertainment and Assessment Commission of the Environmental Fund Administration establishes the score of each project financing request.

¹ The Competition Council requested additional information. The Administration of the Environmental Fund submitted information by address no. 4.492/20.04.2006 registered at the Competition Council with no. DAAS /633/20.04.2006.

²

- Law no. 73/2000 on the Environmental Fund, with the subsequent amendments and completions;
- GD no. 170/2004 on the management of recycled tyres;
- GD no. 1.470/2004 to approve the National Strategy for waste management and the National Plan for waste management;
- GEO no. 78/2000 on the waste regime, approved with modifications by Law no. 426/2001;
- GD no. 856/2002 on the records of waste management and the approval of the list containing waste, including dangerous waste, with subsequent modifications and completions.

(6) According to the Project, in order to be eligible, the beneficiaries must fulfil the following conditions:

- are undertakings;
- perform activities according to the legislation in Romania;
- have paid their financial obligations to the State budget and/or to the Environmental Fund;
- do not sponsor or finance activities with a negative effect on the environment;
- the state aid allocations within the scheme shall not be granted to undertakings in economic-financial difficulty;
- the beneficiaries of financing within the scheme do not operate in the steel sector and the synthetic fibres sector.

(7) The maximum number of beneficiaries within the scheme is 3.

3.3. The aid instruments

(8) Financial support within the Project can be granted as non-reimbursable, reimbursable or as a mix of the two. The maximum value to be financed from State sources, for each beneficiary is the following³:

A – for non-reimbursable support – maximum 50% of the eligible costs of the project financed from State sources;

B – for reimbursable financing - maximum 15% of the eligible costs of the project financed from State sources;⁴

C – for mixed financing - maximum 46% of the eligible costs of the project financed from State sources if the beneficiaries are large enterprises, within the meaning of the Regulation on regional aid, and maximum 54% of the eligible costs if the beneficiaries are SMEs, within the meaning of the Regulation on State aid for SMEs.⁵

³ State aid beneficiaries within the scheme may opt for any of the three financing forms mentioned above, within the limits of the scheme's total budget and the maximum number of beneficiaries.

⁴ Reimbursable financing amounting to 75% gross of the eligible costs of the beneficiary's project is granted. Therefore, the financial support from the State consists in the difference between the interest rate granted by AFM and the market interest rate, multiplied by the number of years for reimbursing the loan (max. 2 years). The financial support will be granted only to cover a difference of up to 10% between the AFM rate and the market interest rate. Therefore, the maximum financial support from the State under the scheme, is 15% gross of the project's eligible costs (10% x 75% x 2 years x eligible costs = 15% x eligible costs). The State aid granted to each beneficiary in the form of difference between interests will be calculated in accordance with the provisions of Annex II to the Regulation on regional aid;

⁵ I. *If the beneficiary is a large enterprise*, non-reimbursable financing amounting up to 40% gross of the eligible costs are granted. In addition, reimbursable financing of 30% gross of eligible costs of the beneficiary's project are granted. Therefore, the reimbursable financial support to be granted by the State consists in the difference between the interest rate granted by AFM and the market interest rate, multiplied by the number of years for reimbursing the loan (max. 2 years). The financial support will be granted only to cover a difference of up to 10% between the AFM rate and the market interest rate. Under these

3.4. Background. General considerations on the recycling of tyres

(9) The 1999/31/EC Directive aims to establish measures to prevent or reduce negative effects on the environment and health determined by waste storage activities. To achieve these objectives, Member States have to apply measures such as: treatment of waste before storage, prohibition of dangerous waste storage together with non-dangerous ones, implementation of control for closure post closure of waste storage facilities.

(10) Priorities of waste management in Romania included in the 2003 National Strategy of waste management elaborata are as follows:

- prevention of waste generation;
- recycling of waste;
- renewed material use of waste;
- renewed thermo use of waste;
- controlled waste storage by ensuring required constructions and installations required significantly reduce the negative impact on the environment.

(11) In order to achieve the objectives established in the Strategy for waste management, in 2004 the National Plan for waste management was drafted. According to this plan, as well as on the basis of GD no. 349/2005 on waste storage, used tyres must not be disposed by controlled storage, in their form or shredded, and must not be incinerated in domestic waste incineration facilities. Used tyres must be recycled or reused as fuel to a greater extent. Also, according to provisions of GD no. 174/2004 on the management of used tyres, undertakings introducing on the market new or used tyres to be reused are to collect used tyres, up to the amount of quantities introduced by them on the market in the previous year and to reuse, recap or recycle and/or use as fuel the entire quantity of collected used tyres.

(12) Actions to be achieved in order to collect and recycle tyres to a higher extent aim the following:

conditions, the reimbursable financial support from the State, granted under the scheme, is of 6% gross from the project's eligible costs ($10\% \times 30\% \times 2 \text{ years} \times \text{eligible costs} = 6\% \times \text{eligible costs}$).

Thus, in the case of mixed financing granted to large enterprises, the maximum financial support from the State is 46% gross of the project's eligible costs ($40\% + 6\% = 46\%$).

The State aid granted to each beneficiary in the form of difference between interest rates will be calculated in accordance with the provisions of Annex II to the Regulation on regional aid;

II. *If beneficiaries are SMEs*, non-reimbursable financing amounting up to 50% gross of the eligible costs is granted. In addition, reimbursable financing of 20% gross of the eligible costs of the beneficiary's project are granted. Therefore, the reimbursable financial support to be granted by the State consists of the difference between the interest rate granted and the market interest rate, multiplied by the number of years for reimbursing the loan (max. 2 years). The financial support will be granted only to cover a difference of up to 10% between the AFM rate and the market interest rate. Under these conditions, the reimbursable financial support from the State, granted under the scheme, is of 4% gross from the project's eligible costs ($10\% \times 20\% \times 2 \text{ years} \times \text{eligible costs} = 4\% \times \text{eligible costs}$). Thus, in the case of mixed financing granted to SMEs, the maximum financial support from the State is 54% gross of the project's eligible costs ($50\% + 4\% = 54\%$).

The State aid granted to each beneficiary in the form of difference between interests will be calculated in accordance with the provisions of Annex I to the Regulation on regional aid.

- reduction of polluting risk by temporary storage of used tyres;
- increase use of used tyres;
- reduction of raw materials consumption, especially of those from non-regenerating sources by usage of tyres as secondary raw materials.

4. DESCRIPTION OF THE PROJECT

4.1. Objective

(13) The objective of the Project consists in the reduction of negative effects on the environment and health determined by storage of tyre waste through investments aim to extend the existing units by acquiring installations to provide a higher extent of environmental protection using clean technologies.

(14) The financial support within the Project will be granted only for investments required to acquire used tyres recycling installations. These investments will contribute to the increase in quality of the environment and in the same time at the development of the areas where these will be carried out.

(15) The notified Project will grant financial support only for investments required for installations of used tyres recycling through mechanical and chemical processes.

(16) Investments in installations within the Project will be maintained for at least 5 years, according to the Draft Decision of the Environmental Fund.

4.2. The necessity of the project implementation

(17) As mentioned at point 11, used tyres must not be disposed by controlled storage and must not be incinerated in domestic waste incineration facilities. The legislation in force provides that tyre waste must be recycled and used for heating energy purposes.

(18) Rubber waste represent an important category of waste which need to be recycled in order to be used as secondary raw material or alternative fuel. Besides the benefits to the environment, by freeing up large land plots taken by used tyres, the recovered rubber may be used as secondary raw material to obtain technical rubber items, carpets, footwear. Shred and sectioned tyres may be used in road construction, flooring, sport courts. Also, the rubber may be used in the chemical industry or co-incinerated, especially in the cement industry, given its high calorific power.

(19) Statistics show that in 2004 the total quantity of used tyres collected in Romania was of 19,430 tonnes and for the first 9 months of 2005 of 18,411 tonnes. Currently, the collected quantities of used tyres have an increasing trend whereas processing capacities are decreasing.

(20) Under these circumstances there is a need to make investments in recycling installations in order to increase their usage as secondary raw materials leading to an increase in the quality of the environment and development of areas where these will be carried out.

4.3. Eligible activities within the Project

(21) The financial support from the State shall be granted, within the Project, for acquisition of new installations and equipment for the mechanical and chemical recycling of used tyres, in view of extension the existing units.

(22) Financing granted within the Project shall cover in part the expenses with purchasing of recycling installations.

(23) The eligible costs of the Project will be considered as the costs set in accordance with the Draft Decision of the Selection Committee of the Environmental Fund for the purchase of installations and equipment within recycling and usage of used tyres activities.⁶

4.4. The budget and the project's implementing period

(24) The total amount to be allocated in the project is of RON 30 million, during 2006 – 2008, as follows:

Table no. 1

Sums allocated within the Project

- RON million -

Year	2006	2007	2008	Total
Sum	8	12	10	30

Source: The notification form

5. ASSESSMENT OF THE SUPPORT MEASURES

5.1. Existence of aid

(25) The criteria based on which a support measure granted by the State is considered to be State aid are provided for in art. 2 (1) of Law no. 143/1999 on State aid, republished.

⁶ In accordance with the Draft Decision of the Selection Committee, the following costs are not eligible: the retrospective costs, the costs with research and designing, the costs of the impact and feasibility studies, the costs for obtaining approvals, authorizations, the infrastructure and supra-structure besides the installation (administrative buildings, endowments for buildings, furniture etc.), lands procurements, losses from the foreign exchange rate, VAT, connections to the utilities necessary for the installation or the equipments within the project, inner roads between the technological objectives-part of the installation, organization of the yard (scaffolding, locating the installations helping the works etc.), laboratory and related endowments, stationery and consumables, costs related to the organization of the bidding and conclusion of the purchase contract, costs related to the personnel training, traveling, wages, motor vehicles and other costs not related to the project.

(26) In order to be considered State aid, according to the Law no. 143/1999 on State aid, the financial support must cumulatively fulfil the following conditions:

- a) to be granted by the State or from State resources,
- b) the measure to be selective,
- c) to ensure an advantage to the undertaking,
- d) to distort or to threaten to distort the competition and to affect the trade between Romania and the EU Member States.

a) the support is granted from State resources

(27) The Project's financing is to be made from resources of the Administration of the Environmental Fund, i.e. state resources.

b) the support measure has a selective character

(28) The support measures within the Project are addressed only to eligible undertakings as set out in paragraph 3.2. Therefore, the financial support granted has a selective character.

c) the support measure represents an advantage to the beneficiaries

(29) The financial support measures granted to the undertakings selected within the Project provide preferential treatment to the beneficiaries, giving them advantages compared with other competitors.

d) the support measure distorts or threatens to distort the competition and to affect the trade between Romania and the EU Member States

(30) The aid granted to undertakings under the aid scheme can or could affect the trade with the EU Member States in so far as the beneficiaries of the financial support measures compete with undertakings from the EU performing similar activities.

(31) In conclusion, the Competition Council considers the financial support granted within the Project as State aid, in accordance with Art. 2 (1) of the Law no. 143/1999 on State aid, republished.

5.2. Compatibility of the State aid scheme

(32) In assessing the compatibility of the scheme, the Competition Council, in view of the environmental impact of the scheme, analyzes the fulfilment of the criteria provided in the secondary legislation concerning the State aid.

5.2.1. Applicability of the Regulation on the regional State aid

(33) In principle, the Competition Council assesses the State aid schemes for investments in environmental protection based on the criteria provisioned in the Regulation on the State aid for environmental protection. However, if the criteria provided in the Regulation on the regional State aid are fulfilled, the State aid can be assessed on the basis of the latter Regulation. Therefore, the Competition Council assesses the State aid scheme established by the Project based on the criteria provided in the Regulation on regional State aid (hereinafter called Regulation).

5.2.1.1. State aid for initial investment

(34) In accordance with art. 2(2) in the Regulation, State aid may be granted for a productive investment (initial investment).

(35) Within the meaning of art. 5 of the Regulation, by initial investment it is understood an investment in fixed capital related to the creation of a new unit, the extension of an existing unit or the start up of an activity implying a fundamental change of the product or the manufacturing process of an existing unit by its rationalization, diversification or modernization.

(36) The Competition Council takes into account the following:

- a) The initial investment financed with State aid within the Project aim to extend the existing units, according to par. 13 and par. 21. Thus, the State aid-financed Project fulfils the eligibility criterion regarding the initial investment, foreseen under Art. 5 (1) of the Regulation;
- b) In accordance with the facts mentioned at point 4.3., the State aid does not aim to finance replacement investments preserving the production potential, thereby fulfilling this way the provisions of art. 5 (1) (a) of the Regulation related to the replacement investment;
- c) In accordance with the facts mentioned at paragraph 6, the State aid scheme provides that allocations shall not be granted to undertakings in financial difficulty. Therefore, the provisions of art. 5 (2) (b) in the Regulation concerning the exclusion of the financial restructuring measures for a firm in difficulty from the category of initial investments are fulfilled.

5.2.1.2. Eligible costs

(37) Granting the financial support within the Project aims to accomplish only investments in tangible assets. Therefore, the assessment of the eligible costs shall be based on the provisions of art. 6 of the Regulation related to costs for investments in tangible assets.

(38) According to art. 6 (1) of the Regulation, the State aid for initial investment is calculated as percentage points of the investment's value. In accordance with art. 6 (2) of the Regulation, this value is established based on set of costs related to the following categories of investments: lands, buildings and equipment forming the standard base provided in Annex 2 of the Regulation.

(39) In accordance with the facts mentioned at point 4.3, the Competition Council notes that all conditions provided at art. 6 of the Regulation referring to the eligible costs for investments are observed.

5.2.1.3. The beneficiary's contribution

(40) The beneficiary must contribute to finance the investments with at least 25% of the eligible costs, in accordance with the provisions of art. 8 (1) of the Regulation.⁷

(41) Based on the facts mentioned at point 3.3., the Competition Council notes that the financing granted within the Project may be non-reimbursable, reimbursable or mixed. The contribution of the State aid beneficiary is the following:

- For non-reimbursable financing - minimum 50% of the project's eligible costs;
- For reimbursable financing – minimum 85% of the project's eligible costs;
- For mixed financing:
 - minimum 54% of the project's eligible costs, if the State aid beneficiary is a large enterprise;
 - minimum 46% of the project's eligible costs, if the State aid beneficiary is a SME.

(42) Therefore, the Competition Council considers that the provisions of art. 8 (1) of the Regulation, concerning the minimum contribution of the regional aid beneficiary to financing of the investments are fulfilled.

5.2.1.4. Aid intensity

(43) In accordance with art. 9 of the Regulation on the regional State aid, the State aid's gross intensity must not exceed 50% of the equivalent net subsidy. According to art. 4(2) of the Regulation on the State aid for SMEs, the maximum ceiling for SMEs may be supplemented by 15 gross percentage points gross given that the maximum aid intensity does not exceed 75%.

(44) Based on the facts mentioned at point 3.3., the Competition Council notes that the aid intensity within the Project is as follows:

- For non-reimbursable financing – maximum 50% of the project's eligible costs;
- For reimbursable financing – maximum 15% of the project's eligible costs;
- For mixed financing:

⁷ This minimum contribution of 25% of the eligible costs cannot be subject to another State aid (art. 8 (2) in the Regulation).

- maximum 46% of the project's eligible costs, if the State aid beneficiary is a large enterprise;
- maximum 54% of the project's eligible costs, if the State aid beneficiary is a SME.

(45) Therefore, the Competition Council considers that the provisions of art. 9 of the Regulation on regional State aid, and those of art. 4 (2) in the Regulation on the State aid for SMEs are fulfilled.

5.2.1.5. Maintaining the investment

(46) In accordance with art. 11 of the Regulation, the State aid for initial investment must be conditioned by its allocation manner or by conditions related to its obtaining on the maintenance of the investment for a minimum period of 5 years.

(47) In accordance with the facts mentioned at paragraph 16, the Competition Council notes that the granting of the allocations within the notified scheme is conditioned by maintaining the investment for a minimum period of 5 years, fulfilling this way the provisions of art. 11 of the Regulation on regional State aid.

5.2.1.6. The State aid's stimulating effect

(48) The Competition Council notes that the Ministry of Environment and Water Management – The Administration of the Environmental Fund, has notified the scheme established by the Project before granting State aid allocations based on it.

(49) In light of the points made at point 4.2., it can be seen that, by granting the State aid within the scheme for investments aiming at increasing the quality of the environment and, at the same time, developing the areas where these will be located.

(50) Therefore, the Competition Council considers that the condition referring to the State aid's incentive effect is fulfilled.

5.2.1.7. Cumulation

(51) In accordance with the provisions of art. 16 of the Regulation, the ceilings for the aid intensity mentioned at paragraph 43 apply to the total aid. This also applies where the beneficiary receives at the same time aid within other schemes, from different sources: local, regional, national or community.

(52) The Administration of the Environmental Fund shall monitor the activity of the undertakings benefiting of State aid allocations within the scheme established by the Project for recycling of used tyres making sure that the granted State aid, cumulated with other State aids granted for the same objective within other schemes, does not exceed the

maximum allowed ceiling for the regional State aid's intensity, namely 50% gross plus 15 percentage points for SMEs.

5.3. Conclusions

(53) The information presented in the notification submitted to the Competition Council leads to the conclusion that the State aid scheme established by the Draft Decision of the Selection Committee for approving the Project for recycling of used tyres does not, in any measure, unduly affects the competitive environment and does not infringe the proper application of the international treaties Romania is part of.

(54) After the assessment, the Competition Council considers that the State aid granted as grants, reimbursable and mixed financings amounting to RON 30 million, consisting in financial allocations from the Environmental Fund for investments in used tyres recycling installations fulfils the granting criteria in accordance with the Regulation on regional State aid, enforced by the Order of the President of the Competition Council no. 55/2004.

DECIDES

Art. 1. The financial support measure granted based on the State aid scheme established by the Project of Decision of the Selection Committee for approving the Project for recycling of used tyres notified by Ministry of Environment and Water Management – The Administration of the Environmental Fund, is considered State aid under the incidence of art. 2 (1) of Law no. 143/1999 on State aid, republished.

Art. 2. Based on art. 21 (2) (b) corroborated with art. 23 (1) (f) of Law no. 143/1999 on State aid, republished, the State aid scheme for regional development enclosed in the Draft Decision of the Selection Committee of the Administration of the Environmental Fund, for approving the Project for recycling of used tyres is authorised.

Art. 3. The budget of the State aid scheme is of RON 30,000,000.

Art. 4. According to the provisions of art. 32 of Law no.143/1999 on State aid, republished, the Administration of the Environmental Fund shall submit to the Competition Council information regarding the State aid scheme for inventorying and monitoring it.

Art. 5. According to the provisions of art. 46 of Law no.143/1999 on State aid, republished, the present Decision may be appealed by concerned persons before the Bucharest Court of Appeals, the Administrative Litigation Section, in 30 days from its communication.

Art. 6. The present Decision shall be communicated by the Secretariat-General of the Competition Council to:

- The Ministry of Environment and Water Management, 12 B-dul Libertatii, sector 5, Bucharest;
- The Administration of the Environmental Fund, 294 Splaiul Independentei str., building A, sector 6, 060031, Bucharest.

PRESIDENT

MIHAI BERINDE