

# DECISION OF THE COMPETITION COUNCIL

no. 154 from 10.07.2006

regarding the assesment of the financial support measures  
granted to Compania Nationala Loteria Romana SA

## COMPETITION COUNCIL,

Taking into account the provisions of European Agreement establishing an association between Romania, and the European Communities on one side and the Member States of those, on the other side, approved by Law no 20/1993, published in the Official Journal of Romania, Part I, no 73 on April 12<sup>th</sup>,1993,

Based on the provisions of the Competition Law no 21/1996, republished in the Official Journal of Romania, Part I, no 742 on August 16<sup>th</sup>, 2005,

Based on the provisions of the Law no 143/1999 on State aid republished in the Official Journal of Romania, Part I, no 744 on August 16<sup>th</sup>, 2005,

Based on the provisions of the Decree no 57/2004 for the appointment of the Competition Council members, published in the Official Journal of Romania, Part I, no 143 on February 17<sup>th</sup>, 2004,

Based on the provisions of the Decree no 836/2006 for the appointment of on vice-president of the Competition Council, published in the Official Journal of Romania, Part I, no 512 on June 13<sup>th</sup>, 2006,

The Report drafted by the case manager and the investigation team following the findings during the investigation opened through the Order of the Competition Council's President no 38/06.03.2006,

### I. PROCEDURE

(1) By complaint no. RS – 8/14.01.2005, the Competition Council was informed by the Romanian Betting Operators Association (representing its members: SC Astra Bettings SRL, SC Calcio Par SRL, SC Stanleybet Romania SRL and SC Wettpunkt International SRL) on the preferential treatment granted to C.N. Loteria Romana S.A. (hereinafter named Loteria Romana) on the gambling market.

(2) The Competition Council analyzed the situation on the gambling market and concluded that the legal provisions in this field provide for granting to **Loteria Romana** fiscal facilities that the other market operators do not benefit from.

(3) By letter no. RS-8/14.02.2005, the Competition Council proposed to the General Secretariat of the Government to modify the anticompetitive provisions identified in the legislation in the gambling field.

(4) In March 2005, the EC Delegation in Romania transmitted a letter to the Ministry of Public Finances and to the Competition Council, for information, in which it drew attention on a potential distortion of the competition on the sector of the gambling market open to other undertakings, generated by the preferential, more favorable fiscal treatment granted to **Loteria Romana**.

(5) By letter no. 748/30.03.2005, transmitted to the Ministry of Public Finances, the Competition Council requested the modification of the incumbent legislation, by eliminating the facilities granted to **Loteria Romana** for those games organized and operated also by other undertakings on the market; the letter requested as well further information regarding the potential State aid character of the fiscal facilities granted.

(6) The Ministry of Public Finances replied by letter no. 370903/16.05.2005, informing that from its establishment until present time, **Loteria Romana** has not organized gambling activities other than the ones for which it holds exclusive rights at a national level. Moreover, the Ministry of Public Finances considers that the purpose of **Loteria Romana**'s activity, respectively "collecting funds for financing objectives of national public interest", justifies the facilities granted to the incumbent company, namely the exemption from paying the license tax and the social stamp tax.

(7) By letters no. RG/463/23.01.2006, RG/821/01.02.2006 and RG 1612/14.02.2006 sent to the Ministry of Public Finances, the Competition Council repeated the request to modify the legislation so that on the competitive sector of the gambling market, all operators, irrespective of the nature of their stock capital, would benefit from equal treatment.

(8) So far, the Competition Council has not received a reply for the requests presented above, and no support measures granted to **Loteria Romana** have been notified yet. Moreover, the Ministry of Public Finances by letter no 2356/09.03.2006, informed the Competition Council that Loteria Romana carries on its activity on a market considered to be closed through legislative enactment. Also, the Ministry of Public Finances informed that "*the law establishing a certain taxation for Loteria Romana can not constitute State aid measures.*"

(9) In 02.03.2006, based on the Note of the State aid Authorization Department, DAAS/366/02.03.2006, it was proposed to open an *ex officio* investigation procedure; thus the Order of the President of the Competition Council no38/06.03.2006 was issued. By address no ICBI/172/08.03.2006 , ICBI 173/08.03.2006 and ICBI 174/08.03.2006 the Competition Council has informed the grantors, Ministry of Public Finances and Ministry of Labor, Social Solidarity and Family, and also the beneficiary, Loteria Romana, about the opening of the investigation procedure and has also requested to indicate what data is confidential.

(10) The grantors or the beneficiary mentioned that no confidential data is included in the note on the opening of the investigation procedure. Thus, the note and the Order to open the investigation procedure were published on the Competition Council's web page, according to the procedural rules.

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(11) During the investigation, the Competition Council, requested Loteria Romana, the Ministry of Public Finances, Ministry of Labor, Social Solidarity and Family, the private undertakings that carry on their activity on the gaming market and to the Organization and Producers of games of chances in Romania Association to send additional information.

## II. THE OBJECTIVE OF THE ASSESSMENT

(12) The decision's objective is represented by the assessment of the financial measures granted to Loteria Romana for organizing and exploiting the games: „**PARILOTO**” and „**VIDEOLOTERIE**”.

## III. DESCRIPTION OF THE FACTS

### 1. The Beneficiary – Loteria Romana

(13) **Loteria Romana** is a stock company owned by the State, set up in 1999 through the reorganization of the Loteria Nationala Régie Autonome, having its headquarters in Poenaru Bordea St, Bucharest, J40/9689/1999, unique registration code 12397185.

(14) The economic and financial results of **Loteria Romana**, based on the annual financial data for the period 2000 – 2005, are the following:

**Table no. 1**

Evolution of the turnover, financial results and employment number during 2000-2005

Total turnover (thousands RON)					
2000	2001	2002	2003	2004	2005 (estimate)
135,225.9	160,185.4	189,605.4	432,468.2	771,072.4	700,000
Gross profit (thousands RON)					
36,357.7	44,139.9	49,234.3	121,955	218,174.7	106,000
Number of employees					
5,088	4,362	3,895	3,674	3,497	3,414

Source: **Loteria Romana**

(15) In 2005, **Loteria Romana** had 3,414 employees and a turnover of RON 704,055.9 thousands (Euro 194,308 thousands<sup>1</sup>). Thus, according to the provisions of the Regulation regarding State aid for small and medium-sized enterprises<sup>2</sup>, with subsequent completions and modifications, **Loteria Romana** is a large company.

<sup>1</sup> The Euro equivalent was determined by using the average exchange rate for 2004 (4.0532 RON/Euro).

<sup>2</sup> published in Official Journal no 340/19.04.2004

(16) The company's object of activity, according to the Romanian Activities Classification (NACE code), is provided in Class 9271 – Gambling and bets.

(17) According to art. 6 from Government Emergency Ordinance no 159/1999 (hereinafter GEO no 159/1999), the main object of activity of **Loteria Romana** is drawing up, organizing, managing and exploiting gambling, manufacturing lotto products, printing works and other polygraphic works as well as other activities mentioned in the Statute.

(18) According to art 6 para (1) of GEO no 69/1998<sup>3</sup> (hereinafter GEO no 69/1998) and art 7 of GEO no 159/1999, **Loteria Romana** has exclusive rights to organize, all over the country, the following gambling: lotto, express, pronosport, envelope lottery ticket and "instant lottery".

(19) Moreover, according to art. 7 para 2 of GEO no 159/1999, Loteria Romana can organize and exploit other gambling activities.

## **2. Legal framework for gaming activities:**

(20) The following laws are applicable to the gaming activities:

- The Association Agreement between Romania and the members of the European Community, ratified by law no 20/1993;
- Law no 31/1996 on the State monopoly regime, with subsequent amendments and completions;
- GEO no 69/1998 on the authorization regime of the gambling activities, with subsequent amendments and completions;
- GD no 251/1999 on the conditions for authorizing, exploiting and organizing gambling activities, with subsequent amendments and completions;
- GEO no 159/1999 on setting up Compania Nationala Loteria Romana SA, with subsequent amendments and completions.

(21) According to Law no 31/1996, the organizing and exploiting gaming activities represent State monopoly. This monopoly has to be understood as being the State right to establish the conditions under which the legal persons are entitled to perform State monopoly activities.

(22) Also, the Association Agreement stipulates that for this field of activity specific rules have to be in place. Therefore, the Association Agreement stipulates that Romania has to ensure the same conditions for organizing and exploiting commercial activities both for the resident and non-resident undertakings. But, in certain fields of activity, the Romanian Government may grant conditions more favorable for the resident undertakings.

(23) Through the legislation that was adopted after the Association Agreement, the Romanian Government decided that in Romania only resident undertakings can operate in the gaming activities field.

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<sup>3</sup> on the authorization regime of the gambling activities, published in Official Journal no. 515/30.12.1998, with subsequent amendments and completions

(24) The Romanian legislation currently in force defines the gambling as being “*the process of acquiring gains of any kind by means of random elements - irrespective of the way these elements occur - correlated with applying any form of direct or dissembled participation taxes*”<sup>4</sup>.

(25) Undertakings who organize and exploit gambling activities can carry on their activities only on the basis of a license issued by Ministry of Public Finance, named license for gambling exploitation. When requesting for a license, among other documents, the organizer must present the Regulation for performing the game.

(26) According to art 6 of GD no 251/1999 gambling activities are classified as follows:

- a) games with gains generated by random elements, where winning is conditioned by both the dexterity or the ability of the player and chance (Atlantic Pusher, Niagara type games etc.), and other similar games ;
- b) casino type games such as : American Roulette, French Roulette, Black-Jack, any type of Poker, Baccara, Chemin-de-fer, Redgo, Punto Banco, Backgammon, Pinnacle, 66, Garde au Coeur, and other similar games;
- c) Bingo and Keno like games in gaming halls, characterized by successive draws and prize-awarding;
- d) sport wagers, if the random elements are represented by the results of sport races of any kind, raffles, games such as bingo and keno broadcasted by TV networks, when the random elements are the result of numbers, letters or other symbols being extracted, irrespective of the electronic, mechanical, video or digital devices used to generate these results or make the draw; any type of raffle, as well as all the interactive games broadcasted live by TV stations (for the part that is considered a game of chance) are included in this category;
- e) contest games with any type of gain, organized through phone lines or other means of telecommunication.

(27) When organizing a gaming activity there are a number of elements that have to be in place: gamble, bet, stake, machinery, organizer and participant. When participating in a gaming activity a participant agrees with all the conditions of the game.

(28) The current Decision of the Competition Council has used the definitions established by **Loteria Romana** in the *Organizing and administrating bets Regulation*<sup>5</sup>, as follows:

- a. **gamble:** the procedure to allot, after collecting a tax, some winnings, of any kind, based on certain random elements, no matter the way those are produced;
- b. **bet:** the gamble in which the random element consists in the results of some sportive events. Considering the type of bet, the random event may consist in other types of events than the sportive ones, established by the organizer, that have an uncertain result;
- c. **stake:** the amount that somebody have to pay in order to participate to the game;

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<sup>4</sup> according to the provisions of GD no 251/22.04.1999 on the conditions for authorizing, exploiting and organizing gambling, published in Official Journal no 171/22.04.1999

<sup>5</sup> issued by Compania Nationala “Loteria Romana” SA

- d. **gambler/participant:** natural person that is part of a game by paying a certain stake determined by the organizer;
- e. **regulation:** assembly of conventional rules that includes both the rules of the game and the rules between the parts involved in the game;
- f. **mutual bets:** form of betting whereby winners receive share of all stakes, the organizer being involved only in collecting the taxes and distributing the winnings;
- g. **fixed odd bets:** bets in which the organizer is the one who decides on the odds and let the participants to know the multiplication quotation in case of winning.

### 3. Loteria Romana's exclusivity

(29) As mentioned before, according to art 6 para. 1 of GEO no 69/1998 and art.7 para. 1 of GEO no 159/1999:

*« **Loteria Romana** has exclusive rights to organize, all over the country, the following gambling: lotto, express, pronosport, envelope lottery ticket and “instant lottery”».*

(30) As mentioned in art. 7 para.2 of GEO no 159/1999 **Loteria Romana** can organize gambling for which competitors exist on the market. In art. 1 para. 2 of the Organizing and performing video lottery gaming Regulation<sup>6</sup>, it is mentioned that: „*In this context, (art. 7 para.2 of GEO no159/1999) **Loteria Romana**. organize and exploits all over the country the video lottery system.*”

(31) Besides the gambling mentioned in art 38, one could conclude that **Loteria Romana** organize and exploits: Pariloto si Videoloterie, gambling that have similar characteristics with the one organized by private undertaking

(32) The legislator mentioned only 5 gambling activities for which the **Loteria Romana** have exclusive rights and stipulated the possibility to perform and others gambling activities. Assessing this it results that **Loteria Romana** may perform any gambling activities but it has exclusive rights on only 5 gambling activities.

(33) Also, if the legislator would have wanted to grant to **Loteria Romana** exclusive rights for the Videoloterie si Pariloto gambling, taking into account the fact that these gambling were organized and exploited starting with 2002 and 2004, the provisions of GEO no 159/1999 could have been amended in such a way to mention that **Loteria Romana** has exclusive rights for those two gambling as well.

(34) Concomitantly, having in regard the specific characteristics of the gambling Pariloto and Videoloterie, one could concluded that those two gambling are not part of the gambling for whom **Loteria Romana** has exclusive rights.

## IV. THE RELEVANT MARKET

(35) A relevant market comprises a product or group of products and the geographic area in which these products are produced and/or traded.

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<sup>6</sup> issued by Compania Nationala “Loteria Romana” SA

(36) The relevant market of the product comprises all those products considered as interchangeable or substitutable by the consumers in terms of characteristics, prices and intended use.

(37) The geographic relevant market comprises the area where the undertakings involved in the delivery of products included in the product market are located, area where the conditions of competition are sufficiently homogeneous, and which can be distinguished from neighboring geographic areas particularly because the competition conditions are substantially different.

#### 4.1. The geographic market

(38) The geographic relevant market is the Romanian territory.

#### 4.2. The product/services relevant market

(39) The product/services relevant markets on which the analyzed support measures takes place are: “sportive fixed odd bets market” and “gambling with electronic machinery with gains generated by random elements market”.

##### 4.2.1. Fixed odd bets market

(40) Starting with September 2004, **Loteria Romana** has operated on this market by organizing and exploiting Pariloto.

##### **PARILOTO**

##### **Short description of the game**

(41) It is a sportive fixed odd bet that gives the player the possibility to win if the results forecasted are the right one. The game Pariloto is composed of three sections: FOTBAL, FOTBAL PLUS and SPECIAL, and gives the player the possibility to create its own version of the game.

(42) According to the “Organizing and administrating bets Regulation” issued by **Loteria Romana**, in fixed odd bets case the possible gains are known when the bet is validated. The quotation may change but the bets that have already been registered are not modified by this. A version is declared to be a winning one only when all the forecasts for the selected events are correct. In this case, the gain received by the player is equal to the value of the version multiplied with the quotation for all the forecasts mentioned in the version.

(43) Following a comparative analysis of the rules from the Regulations for performing fixed odd bets issued by private undertakings and approved by the Ministry of Public Finances and

the Regulation for performing Pariloto<sup>7</sup>, the Competition Council concluded that the fixed odd bets organized by private undertakings and the fixed odd bets organized by **Loteria Romana** as Pariloto, have similar characteristics, being substitutable from the consumer point of view<sup>8</sup>.

(44) Concluding, the product/services relevant market is the sportive fixed odd bets market.

(45) The main undertakings that carry on their activity on this market are: CN Loteria Romana SA, SC Stanleybet Romania SRL, SC Astra Sport Bets SRL, SC Meridian Bet SRL, SC Global Sports Bets SRL, SC Wettpunkt International SRL, SC Calcio Par SRL, and others.

#### **4.2.2. Gambling with electronic machinery with gains generated by random elements market**

(46) Starting with April 2002, **Loteria Romana** has operated on this market through Videoloteria's terminals. Between April – October 2002, according to the data sent by **Loteria Romana**, the Videoloteria's terminals have functioned as simple electronic machineries.

#### **VIDEOLOTERIA**

##### **Short description of the game**

(47) Videoloteria is a gambling composed of “an ensemble of equipments, software and games that offers to the players the possibility to play a lot of games both „casino” and „non-casino” type (poker, Black-Jack, Keno, Bingo, others)”<sup>9</sup>.

(48) According to the performing rules issued by **Loteria Romana**, Videoloteria is based on random elements of events generated by terminals. The Videoloteria's games are individual games which involve a single player, one terminal and one or many games.

(49) According to the definitions found on the web pages VLT – Video Lottery Terminal is similar to a slot machine, except that it is connected to a centralized computer system that determines the outcome of each wager using a random number generator<sup>10</sup>. Thus, the VLT is a machine in which coins, credits or tokens are deposited in order to play any game. The machines can pay out in two ways. Either coins drop out or a paper receipt is printed that can be redeemed for prize money<sup>11</sup>.

(50) On this market there are other private undertakings that organize gambling by using electronic machinery. Moreover, according to the information received during the

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<sup>7</sup> <http://www.pariloto.ro/eKontentParilotoFiles/home/regulament/regulament/index.html>, at 12.05.2006

<sup>8</sup> Guidelines on relevant market definition with a view to determining the significant market share, published in Official Journal. no.288/ 01.04.2004

<sup>9</sup> Organizing and performing video lottery gaming Regulation, issued by Compania Nationala “Loteria Romana” SA

<sup>10</sup> [http://en.wikipedia.org/wiki/Video\\_Lottery\\_Terminal](http://en.wikipedia.org/wiki/Video_Lottery_Terminal)

<sup>11</sup> [www.lotteryinsider.com/products/video.htm+%22the+whole+world+lottery+guide%22+Video+lottery+terminals&hl=ro&gl=ro&ct=clnk&cd=1](http://www.lotteryinsider.com/products/video.htm+%22the+whole+world+lottery+guide%22+Video+lottery+terminals&hl=ro&gl=ro&ct=clnk&cd=1)



investigation procedure, on this market private undertakings operate, exploiting the same electronic machinery as Loteria Romana does, bought from the same supplier.

(51) The Organizing and Performing gaming activities Association informed the Competition Council that the Videoloteria's terminals used by **Loteria Romana** works like any other electronic machinery used by private undertakings, except for the fact that prize is printed on a paper receipt.

(52) Having in regard the facts mentioned above and the rules for performing this game, the Competition Council came to the conclusion that the game organized and exploited by **Loteria Romana** as Videoloterie, is substitutable with the game organized and exploited by private undertakings using electronic machinery.

(53) Concluding, the product/services relevant market is "market of gambling with electronic machinery with gains generated by random elements".

(54) The main undertakings that carry on their activity on this market are: CN Loteria Romana SA, SC Intertop-Admiral SRL, SC Max Bet SRL, SC Merkur SRL, SC Million SRL, SC Timex Astra Club SRL, others.

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(55) Having in regard the facts mentioned above, it can be concluded that the markets affected by the support measures are: "sportive fixed odd bets market" and the "market of gambling with electronic machinery with gains generated by random elements".

## **V. THE SUPPORT MEASURES**

### **5.1. Legal basis**

(56) The financial support measures for **Loteria Romana** are granted based on:

- G.E.O. no. 69/1998 on the authorization regime of the gambling activities;
- G.E.O. no. 159/1999 on setting up the National Company Loteria Romana S.A.;
- G.E.O. no. 195/2000<sup>12</sup> on the allocation of funds for financing the construction of buildings for youth and sport halls.

### **5.2. Description of the financial support measures**

#### **a) License granted by enactment of the law (GEO 69/1998 and GEO 159/1999)**

(57) Undertakings who organize and exploit gambling activities can carry on their activities only on the basis of a license issued by Ministry of Public Finance, named license for gambling exploitation. The license is issued with the collection, on a yearly basis, of some

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<sup>12</sup> on the allocation of funds for financing the construction of buildings for youth and sport halls, approved by Law no. 195/2002, published in Official Journal no. 849/29.12.2001

taxes (hereinafter license taxes). The license availability is 12 months from the moment when was issued.

(58) In order to obtain the license, the undertakings have to follow the procedure mentioned in GD no 251/1999, namely to send to the Ministry of Public Finances some information, including the Regulation for performing the games for whom the license is requested.

(59) Based on the provisions of GEO no. 69/1998 and GEO no. 159/1999, **Loteria Romana** benefits from the **license granted by enactment of law**, including for the gambling activities where it does not have exclusive rights, except for the gambling organized in association with other undertakings.

(60) In fact, it is ascertain that **Loteria Romana** did not ask for a licenses and did not pay the license taxes for organizing and exploiting Pariloto and Videoloterie gambling.

#### **b) exemption from payment of social stamp tax (GEO no 195/2001)**

(61) In order to constitute the National Solidarity Fund<sup>13</sup>, *the social stamp tax* was introduced, being applied at the price of each participation of the players to the gambling. The social stamp tax is 10% of the price for each participation and is added to the participation price.

(62) The amount representing the value of the social stamp tax is transferred into the National Solidarity Fund account, on a monthly basis, by the undertakings that collect this tax, until the 5<sup>th</sup> of the subsequent month to the month expired<sup>14</sup>. According to GEO no 195/2001, starting with 2002, **Loteria Romana** has been **exempted from the payment of the social stamp tax** for all the gambling organized and exploited.

(63) Concluding, starting with 2002, **Loteria Romana** has not determined and collected the social stamp tax and has not transferred it into the National Solidarity Found account. In this way a discriminatory treatment was created as compared to other undertakings on the market.

#### **c) other financial support measures (GEO no 159/1999<sup>15</sup>)**

(64) GEO no 159/1999 stipulates that: “the amounts charged for gambling organized by Loteria Romana are exempted from payment of taxes and other contributions of any kind.”

(65) The participation to the gambling may be conditioned by the payment, by the player, of some taxes and other contributions. In this case, the organizer must charge and transfer to the State budget those amounts. By GEO no 159/1999 **Loteria Romana** has been exempted from payment of taxes and other contributions of any kind afferent to the amounts for participation at the gambling activities.

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<sup>13</sup> constituted according to the provisions of GEO no. 118/1999, published in O.J. no. 312/30.06.1999. It is a special fund administrated by the Ministry of Labor, Social Solidarity and Family, whose scope is to contribute at the reduction of the poverty in the families that have extremely difficult situations, on the basis of the national solidarity principle.

<sup>14</sup> GEO no. 32/2001 on reglementing some financial issues, published in O.J. no. 110/05.03.2001, with subsequent amendments and completions.

<sup>15</sup> art. 21 of the Statute of Loteria Romana , annexa to GEO no 159/1999

## **VI. EVALUATION OF STATE AID CHARACTER OF THE FINANCIAL SUPPORT MEASURES GRANTED TO LOTERIA ROMANA**

### **The State aid nature of the financial support measures**

(66) Art. 2 of Law no. 143/1999 on State aid, republished, defines State aid as „any support measure granted by State or from State resources that distorts or threatens to distort competition or affects the trade between Romania and EU Member States”, being considered incompatible with a normal competition environment.

(67) In accordance to this definition, these financial support measures must cumulatively fulfill the following conditions:

- to be granted by the State or from State resources,
- to be selective (granted to a certain undertaking or sector)
- to ensure an advantage to the undertaking
- to distort or potentially distort trade between Romania and EU Member States

#### **a. Support granted by the State or from State resources**

(68) Firstly, the financial support must be granted by the State or from State resources. According to art.2(8) of Law no.143/1999, the payment exemptions, reductions or postponements in relation to budgetary taxes are qualified as methods to grant State aid as the State renounces to collect its revenues.

#### **License granted by enactment of the law**

(69) According to the provisions of GEO nr. 69/1998 and GEO nr.159/1999, **Loteria Romana** has a license to operate granted by enactment of the law.

(70) The general rule sets that the license is issued annually, upon payment of a license tax. The tax is established according to the type of game organized and exploited. Thus, since **Loteria Romana** was exempted from paying license tax for operating Pariloto and Videoloteria, the State has renounced at collecting its rightful revenues.

#### **Exemption from payment of social stamp tax**

(71) By exempting **Loteria Romana** from charging the social stamp tax for every participation to Pariloto and Videoloteria and transferring it to the National Solidarity Fund, the State has given up at its due revenues.

#### **Other financial support measures**

(72) According to the legal provisions „amounts charged for participations to games of chance operated by **Loteria Romana** are exempted from payment of taxes and contributions of any kind”. Thus, the State has renounced at its due revenues from operating Pariloto and Videoloteria.

(73) Since the Ministry of Public Finances and the Ministry of Labor, Social Solidarity and Family are State institutions, and their actions are considered actions of the Romanian State, it is obvious that the financial support was granted by the State, from State resources.

### **b. Selectivity criteria**

(74) In order for a financial support measure to be considered State aid, the second condition that must be fulfilled is the selectivity criteria. Thus, the financial measure must favor certain companies, the production of certain goods or services.

(75) Since granted only to **Loteria Romana**, the measures listed below are selective:

- operating license granted by enactment of the law (and therefore resulting in an exemption from payment of license tax);
- exemption from charging social stamp tax and transferring it to the State budget;
- exemption from payment of taxes and any other contribution corresponding to the participations in Pariloto and Videoloteria;

### **c. Advantage**

(76) In order to be considered State aid, the financial support measure has to provide an advantage for the beneficiary.

#### **License granted by enactment of the law**

(77) Since games of chance are State monopoly, the law stipulates that undertakings need a license to operate such activities. Obtaining a license requires, among other obligations, the payment of a license tax. The law individualizes the amount of this tax for every game of chance, without stipulating for a different tax (0 RON) if the license is granted by enactment of the law<sup>16</sup>.

(78) If the **Loteria Romana** was subject of the general licensing regime for undertakings on the relevant market, it should have paid the license tax for operating Pariloto and Videoloteria. Therefore, by granting **Loteria Romana** license through enactment of the law, the Romanian State renounced collecting an annual license tax.

#### **Exemption from payment of social stamp tax and other financial support measures**

(79) The existing legal provisions exempt **Loteria Romana** from the obligation to apply the social stamp tax (tax due to the State by the players for each game contribution/bet) to the sale price set by the company. Thus, in its final sale price this tax is not comprised and therefore not collected and transferred to the State budget.

(80) Also, the legal provisions grant preferential treatment to **Loteria Romana**, by exempting it from applying, collecting and transferring to the State budget any other taxes and contributions from the participants to Pariloto and Videoloteria.

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<sup>16</sup> art. 21 of the GD no.251/1999.

(81) Thus, being exempted from applying, collecting and paying such taxes, **Loteria Romana** may:

- either maintain a lower sale price than the price that includes these taxes,
- sell game participations at the price level of its competitors (that includes taxes), and therefore increasing its profits.

(82) Given the above mentioned, by granting such facilities to **Loteria Romana**, an obvious economic advantage was created.

#### **d. Distortion of competition or affecting the trade with EU Member States**

(83) In order to be considered State aid, the financial support measures must distort or potentially distort competition or trade between Romania and EU Member States.

(84) The investigation team considers that the intervention on the market of the State or public authorities may lead to a change in the market conditions.

(85) The exemptions granted to **Loteria Romana** create the premise for distorting the competition on the relevant market, since the incumbent has the possibility to set lower prices in its gaming activities or to increase its profits by having same prices as its tax-paying competitors.

(86) As shown above, the Ministry of Public Finances, as regulator, has granted licenses for gaming activities to other undertakings, therefore creating a competitive market distorted by the financial support measures granted to **Loteria Romana**.

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**(87) In conclusion, the financial support measures granted to Loteria Romana represent State aid and fall under the provisions of Law no. 143/1999 on State aid, republished.**

#### **Observing the obligation for prior notification. The standstill clause**

(88) Ministry of Public Finances, as grantor, did not observe the provisions of art. 15 and 16 of Law no. 143/1999 on State aid, republished, regarding the obligation to notify the intent to grant State aid to **Loteria Romana**.

### **VII. ANALYSIS OF THE COMPATIBILITY OF THE STATE AID GRANTED TO LOTERIA ROMANA**

(89) According to the legislation, **Loteria Romana** benefits from the following support measures:

- license granted by law enactment (exemption from payment of license tax);
- exemption from charging and transferring social stamp tax;

- exemption from charging and transferring taxes and other contributions of any kind afferent to the amounts for participation at the gambling activities.

(90) Art 2 from Law no 143/1999 on State aid, republished, stipulates that any measure of support from the State or from the resources of the State that distorts or threatens to distort competition, or affects the trade between Romania and the Member States of the European Union is considered incompatible with a normal competition environment.

(91) However, certain State aid can be considered to be compatible and can be authorized by the Competition Council, but only with the observance of the criteria mentioned in the Competition Council's regulations and guidelines.

(92) The support measures granted to **Loteria Romana** does not qualify for the exceptions mentioned in Law no 143/1999 on State aid. It is not social aid granted to certain consumers, nor is it related to natural disasters or other exceptional occurrences.

(96) As far as it concerns State aid that can be considered to be compatible because are meant to promote small and medium-sized firms, research and development, environmental protection, job creation or training, it is clear that the support measures do not have those objectives.

(94) Neither the support measures are not intended to promote culture or heritage conservation or promoting exports through actions such as: national weeks, international fairs, presentation shops<sup>17</sup>.

(95) Taking into consideration the very good economical financial situation, **Loteria Romana** cannot benefit from State aid for rescue and restructuring.

(96) Concomitantly, taking into account granting this aid was not conditioned by an investment and does not lead to any region's development, **Loteria Romana** could not benefited from State aid for regional development.

(97) Taking into account the nature of the support measures granted to **Loteria Romana**, State aid may be considered to be operating aid because it is intended to reduce the costs that the company would have to bear in the course of its normal business.

(98) As a general rule, operating aid, granted for reducing the company's normal expenditure, is prohibited.

(99) Exceptionally, such aid may be granted in the beneficiary areas, provided that the following conditions are met cumulatively:

- a) it is justified in terms of its contribution to regional development;
- b) its level is proportional to the handicaps it seeks to alleviate;
- c) operating aid must be both limited in time and progressively reduced.

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<sup>17</sup> through actions such as: national weeks, international fairs, showrooms etc., provided that all interested undertakings may benefit from them.

(100) In order to prove the compatibility of such an aid, the grantor has to demonstrate the existence of any handicaps and gauge their importance, by notifying to the Competition Council the intention to grant aid.

(101) Having in regard that, neither the grantor or the beneficiary did not prove the existence of any handicaps and the gauge of their importance for regional development could not be proved.

(102) Also, there is no limitation in time and no progressively reduction of the amount of the support measures.

(103) Having in regard the facts mentioned above the State aid granted as: exemption from payment of license tax, exemption from payment of collecting and transferring social stamp tax and other taxes and contributions of any kind afferent to the amounts for participation at the gambling activities, can not constitute compatible operating aid.

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**(104) Concluding, the Competition Council considers that the State aid granted to Loteria Romana are illegal and incompatible with a normal environment.**

## **VIII. METHODOLOGICAL ASPECTS**

(105) Taking into consideration that, from the information received, **Loteria Romana** did not benefit from the State aid granted based on art. 21 from **Loteria Romana's** Statute<sup>18</sup>, the amount of State aid and related interest are determined only for the following support measures:

- exemption from payment of license tax;
- exemption from payment of collecting and transferring social stamp tax.

### **The moment when Loteria Romana benefited from incompatible State aid**

(106) State aid granted through GEO no 69/1998, GEO no159/1999 and GEO no 195/2001 were put at **Loteria Romana's** disposal from the moment when it has started the organization and exploiting of the games (Pariloto and Videoloterie), as follows:

- September 2004 for Pariloto;
- April 2002 for Videoloterie.

### **The amount of incompatible State aid**

(107) According to the legal provisions in force<sup>19</sup>, **the license tax** is determined, on a yearly basis, as follows:

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<sup>18</sup> „the amounts charged for gambling organized by Loteria Romana are exempted from payment of taxes and other contributions of any kind”.

<sup>19</sup> GEO no 69/1998 and GD no. 251/1999

- for sportive bets - 5% of the estimated incomes, but no less than RON 10,400;
- for every mechanic or electronic machinery – RON 1,669.5 - annual authorization tax, from which:
  - RON 546 before releasing the authorization documents,
  - The difference of RON 1,123.5 it has to be paid on a monthly basis, in equal installments, until the 25<sup>th</sup> of the current month for the following month.

(108) According to the legal provisions in force<sup>20</sup>, **the social stamp tax** is determined as follows:

- For sportive bets – 10% of each participation to the gambling;
- For gambling using mechanic or electronic machinery - 10% of the monthly machinery's balance account.

(109) Therefore, the amount of State aid was determined, as follows:

**A. Pariloto:**

- In case of exemption from payment of license tax – 5% of the incomes made by Loteria Romana from exploiting this game during September 2004 – April 2006: **RON 6,245,707.2.**
- In case of exemption from payment of social stamp tax – 10% of the incomes<sup>21</sup> made by Loteria Romana from this game, during September 2004 – April 2006: **RON 11,210,054.9.**

**B. Videoloteria:**

- In case of exemption from payment of license tax – the total amount of the license taxes for each individual electronic machinery used during April 2002 – April 2006 **RON 9,678,787.1;**
- In case of exemption from payment of social stamp tax – 10% of the amount of the monthly machinery's balance account used during April 2002 – April 2006: **RON 17,167,916.5.**

(110) The total amount of illegal and incompatible State aid granted to **Loteria Romana** during April 2002 – April 2006 is **RON 44,302,465.7.**

**The amount of related interest**

(111) Related interest, in case of recovery or reimbursement of an illegal or forbidden State aid, was determined using the provisions of the *Guidelines on interests level in the case of recovery or reimbursement of an illegal or forbidden State aid*<sup>22</sup>,

<sup>20</sup> GEO no 118/1999 and Methodological Normes for applying GEO no 118/1999, published in Of. J. no 457/15.09.2000,

<sup>21</sup> Incomes = the price for a participation to a gambling multiplied with the number of the participants

<sup>22</sup> applied through the President Competition Council Order no. 51/21.03.2005, published in Official Journal of Romania, Part I, no 253/25.03.2005.



(112) The interest level applied is the interest enforced at the moment when the illegal State aid was put at the disposal of the undertakings. This interest shall be applied until the recovery moment of the State aid, using the capitalization principle.

(113) The interest level used in the case of recovery of illegal State aid is the same with the level of the reference interest of the National Bank of Romania in the first working day of the year, for the interest afferent to the State aid granted during the first semester of the year. In order to calculate the interest afferent to the State aid granted during the second semester of the year the reference interest of the National Bank of Romania for the first working day from July is to be used.

(114) When the level of the reference interest of the National Bank of Romania has been modified with more than 5 percent points comparative with the initial interest, the level of the interest has been modified consequently. The new level of the intensity it is applied from the first day of the following month in which the level of the intensity is modified.

(115) The amount of interest was determined for each support measure, by adding all the amounts of interest resulted taking into consideration the amount of State aid received.

(116) In Videoloteria's case, the interest was determined for every terminal, from the moment when was used, according to the data received from **Loteria Romana**.

(117) The interest was determined from the moment when the aid was put at the beneficiary's disposal (April 2002 – Videoloteria and September 2004- Pariloto) and until April 30, 2006, as follows:

**A. Pariloto:**

- In case of exemption from payment of license tax, the related interest is: **RON 839,785.4;**
- In case of exemption from payment of social stamp tax, the related interest is: **RON 700,633.1.**

**B. Videoloteria:**

- In case of exemption from payment of license tax, the related interest is: **RON 1,966,771;**
- In case of exemption from payment of social stamp tax, the related interest is: **RON 2,833,543.5.**

(118) The total amount of interest related to the illegal and incompatible State aid granted to **Loteria Romana** until April 30<sup>th</sup>, 2006 is: **RON 6,340,733.**

## **IX. CONCLUSIONS**

(119) Following the investigation procedure, the Competition Council concludes that:

- The State aid granted to **Loteria Romana** is illegal, being granted without notification and authorization.

- The support measures from which the company has benefited represent **incompatible State aid**.

## **DECIDES**

**Art. 1.** Based on art 21 (1), (2) letter d) from the Law no 143/1999 on State aid, republished, and on art 9 (5) from the Regulation on investigation procedure on state aid, the Competition Council decides that the aid granted to **CN Loteria Romana SA** having its headquarters in Poenaru Bordea St, Bucharest, J40/9689/1999, unique registration code 12397185, for organizing and exploiting the games Pariloto and Videoloterie as:

- license granted by enactment of the law;
- exemption from payment of social stamp tax;
- exemption from payment of taxes and other contributions of any kind related to participation on gambling activities

are illegal and incompatible with a normal competition environment.

**ART. 2** The value of the illegal and incompatible aid from which benefited **CN Loteria Romana SA**, is of **RON 44,302,465.73**.

During 26<sup>th</sup> of April 2002 (representing data starting with the undertaking benefited by the illegal state aid) and 30<sup>th</sup> of July 2006, the interest afferent to the illegal and incompatible state aid of which the undertaking benefited is **RON 6,340,733**, calculated considered an annual interest of:

- 34.6% for 26<sup>th</sup> of April 2002 – 31<sup>st</sup> of July 2002;
- 28.3% for 1<sup>st</sup> August 2002 – 30 November 2002;
- 22.2% for 1<sup>st</sup> December 2002 – 28<sup>th</sup> February 2005;
- 15.69% for 1<sup>st</sup> March 2005 – 30 April 2005;
- 8.45% for 1<sup>st</sup> May 2005- 30 June 2006.

**ART.3** On the basis of art. 194<sup>1</sup> par. 1 of the Fiscal Procedure Code, as it was amended by GEO 129/2005, starting with the moment when this decision have been communicated to the Ministry of Public Finances, the state aid granted as:

- license granted by enactment of the law;
- exemption from payment of social stamp tax;
- exemption from payment of taxes and other contributions of any kind related to participation on gambling activities;

to **CN Loteria Romana SA** having its headquarters in Poenaru Bordea St, Bucharest, J40/9689/1999, unique registration code 12397185, for organizing and exploiting the games Pariloto and Videoloterie it is stopped.

**ART.4** Having in regard the provisions of art. 22 of Law no. 143/1999 on state aid, republished, as well as of art. 194<sup>2</sup> of the Fiscal Procedure Code, as it was amended by OUG 129/2005, the Ministry of Public Finance, as a grantor, will take all the appropriate measures in order to recover the illegal and incompatible state aid from CN Loteria Romana SA,

together with the afferent interests calculated, according to the *Guidelines on the interest rate applied in case of recovery or reimbursement of the illegal and prohibited aid*, until the state aid is effectively recovered.

**ART.5** During the recovery process the Ministry of Public Finance shall take into account any other state aid granted after 30 April 2006 to CN Loteria Romana SA as license granted by enactment of the law and exemption from payment of social tax for organizing and exploiting the games Pariloto and Videoloterie.

**ART.6** The Ministry of Public Finance will inform quarterly the Competition Council on the actions taken for the implementation of the measures disposed by the present Decision. The first report will be realized in 2 months after the present Decision was issued.

**ART.7** Based on art 26 letter 1 from Law no 21/1996 on competition, republished, the Competition Council recommends to the Ministry of Public Finances to adopt the following measures:

a. amendments to provisions granting preferential treatment to **Loteria Romana** for gambling for which the incumbent does not have exclusive organization and exploitation rights:

- provisions granting license by enactment of the law should be eliminated;
- provisions exempting Loteria Romana from charging, collecting and transferring the social stamp tax to the State budget should be eliminated
- provision stating that „amounts charged for participations to games of chance operated by **Loteria Romana** are exempted from payment of taxes and contributions of any kind” should be eliminated

b. a clear delimitation of the games for which Loteria Romana has exclusive rights.

**ART.8** The present Decision constitutes writ of execution.

**ART.9** According to the provisions of art. 46 of Law no.143/1999 on the state aid, republished, the present Decision can be appealed by interested parties to the Court of Appeals Bucharest, the Administrative Litigation Section within 30 days from its communication.

**ART.10** The present Decision becomes applicable at the date of its communication.

**ART.11** The present Decision will be communicated by the General Secretariat of the Competition Council to:

- Ministry of Public Finance, 17 Apolodor Street, sector 1, Bucharest;
- **CN Loteria Romana SA** having its headquarters in Poenaru Bordea St, Bucharest.