

DECISION OF THE COMPETITION COUNCIL
no. 161 of 13.07.2006
concerning the regional state aid granted to some undertakings at their
privatization

COMPETITION COUNCIL,

Taking into consideration 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,

Taking into consideration the provisions of the Competition Law no. 21/1996, republished in the Official Gazette no. 742, Part I, of 16.08.2005,

Taking into consideration the provisions of the State aid Law no. 143/1999, republished in the Official Gazette, Part I, no. 744 of 16.08.2005,

Taking into consideration the provisions of the Regulation for regional state aid, published in the Official Gazette, Part I, no. 340 of 19.04.2004, with subsequent amendments and completions, issued in the enforcement of Law no. 143/1999 on state aid, republished,

Taking into consideration Decree no. 57/2004 on the appointment of the Competition Council,

Based on the following,

1. PROCEDURE

(1) By the AVAS letter no.2748/09.05.2006, registered at the Competition Council with no. RS-AS-86/10.05.2006, the Authority for State Assets Recovery notified, based on art. 15 of *Law no. 143/1999 regarding state aid, republished*, the individual State aid intended to be granted to the

undertakings mentioned in Annex no.1 to the current decision. The notification became effective on 15.04.2006.

2. [...]¹

3. DESCRIPTION OF THE FINANCIAL SUPPORT MEASURES

3.1. The objective of the individual aid

(3) The individual aid granted to the undertakings mentioned in Annex no.1 aim at encouraging the investments, the development of regions where undertakings are located, the promotion of expansion, modernisation and diversification of undertakings' activities and at the creation of new jobs.

3.2. Beneficiaries

(4) The beneficiaries of the financial facilities are the undertakings mentioned in Annex no.1 to the present decision.

(5) From the economic-financial data presented in Annex no.3 it is ascertained that the undertakings obtain profit. Also, the registered economic-financial indicators show that the beneficiary firms were not in difficulty in the years prior to privatization².

(6) According to the data presented in Annex no.1A, the undertakings that are subject to the present decision are large enterprises that operate in the sectors presented in Annex no.1B.

3.3. Methods for granting the financial support

(7) The financial support measures granted to the undertakings that are subject to the present decision are in the form of exemption from payment and/or rescheduling and/or conversion of some historical debts (overdue debts), such as taxes, contributions and other budgetary revenues, as well as the interest and the corresponding penalties of any type, dividends and

¹ Confidential information

² See Annex no.3

damages calculated and not paid, credits granted for the payment of electricity and natural gas consumptions, restructuring funds granted by AVAS, receivables of the utilities' suppliers. The detailing of the support measures granted to these undertakings as well as their amount are presented in Annex no.2.

3.4. General considerations

(8) The undertakings that are subject to the present decision benefit from state support measures during the privatization process. Thus, the undertakings benefit from support measures in the years presented in Annex no. 2.

(9) The privatization of the undertakings analyzed in the current decision was made based on the following elements:

- The methods for selling of shares were negotiated based on final bids, improved and irrevocable, by fulfilling some pre-qualification criteria;
- The advertising for the sale of the block of shares was made in newspapers with broad national circulation, local journals, at the undertakings' location, at AVAS's headquarters and on the Internet;
- Following the promotion material, the Presentation files were bought and the bids were submitted at the deadline foreseen in the announcement;
- After checking the documents provided by the bidders, the Privatization Commissions allowed to the negotiation process the bidders that fulfilled the pre-qualification criteria and submitted the participation documents requested through the announcement and the presentation files;
- The Privatization Commissions negotiated with the bidders soliciting the improvement of the technical and financial offers;
- Negotiations ended when the bidders submitted their final bids, improved and irrevocable;
- The sale-purchase price for the shares was established based on the supply and demand.

In the presentation files and in the share sale-purchase agreements it was stipulated granting of facilities from the payment of the undertakings' overdue debts towards the budgetary creditors. The share sale-purchase agreements also stipulate the investment and financial commitments assumed by the buyers in the privatization process achieved by AVAS and are also included in the Investments plans presented in Annex no. 4.

(10) The undertakings that benefit from the state support measures mainly activate on the markets that imply the achievement of the main activities detailed in Annex no.1B. Moreover, AVAS presents in Annex no. 1B the market shares of the beneficiary undertakings as well as those of their competitors.

4. DESCRIPTION OF THE INVESTMENT PROJECTS

4.1. Objective

(11) The main objective pursued by the respective undertakings, through the achievement of the Investment projects, is the regional development, which mainly implies, for the undertakings from the areas taken into consideration, the ensuring of the same chances for development as for those from the other parts of the country, without causing the increase of the production capacities in the sectors in which already exist problems related to over-capacity.

(12) The financial support within each Project will be granted only for new investments in equipments, apparatus and installations. These investments will contribute to the increase in quality of the environment and at the increase of the employed workforce which will lead to the development of the areas where these will be carried out.

(13) According to the notified Projects, financial support will be granted only for investments presented in Annex no.4.

(14) The investments within the Notified Investment Projects will be maintained for at least 5 years, according to the information provided in the notification³.

4.2. The necessity of the project implementation

(15) The historical debts cumulated by the undertakings in the years prior to privatisation decreased their chances for privatisation, creating a favourable framework for the increase of unemployment and implicitly for the migration of work force. Currently, the entire area of Romania is considered deprived

³ AVAS states that these undertakings presented a certified declaration in which they specified that they will maintain the investments for a period of at least 5 years.

area and thus by granting financial support in the form of writing off the historical debts cumulated by the undertakings towards the state, it is aimed at decreasing the unemployment, eliminating of the regional disparities and also at increasing the living standard.

(16) The beneficiary undertakings are located in 5 areas of the country, thus covering approximately 63% of the 8 development regions of Romania. As a consequence, the state renouncing to collect the revenues from the payment of those historical debts by the respective undertakings, in view of investing for the expansion of their activities, generates economic growth.

(17) Eligible investments that are intended to be made according to the plan prepared by the undertakings consist in equipments, installations and new apparatus whose use will lead to the development of the area in which they will be placed.

4.3. Eligible activities within the Project

(18) The financial support from the State shall be granted, within the Project, for acquisition of new installations and technological equipment in view of extending the existing units.

(19) The state will renounce to collect the revenues it could obtain from those historical debts in order for the undertakings to use them in the assumed Investment projects.

(20) The eligible costs of the Investments projects are those presented in Annexes no.4 and no.5 and correspond to the acquisition of installations, apparatus and new equipments.

4.4. The amount and the project's implementing period

(21) The total amounts foreseen to be allocated for each investment project as well as the duration of each project are mentioned in Annex no.4.

5. ASSESSMENT OF THE FINANCIAL SUPPORT MEASURES

5.1. Existence of aid

(22) 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

(23) 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

(24) The state renouncing to collect certain revenues from the payment of historical debts cumulated by the undertakings that are subject to the present decision imply state resources.

b) the support measure has a selective character

(25) The support measures are addressed only to eligible undertakings mentioned in

Annex no.4. Therefore, the financial support granted has a selective character.

c) the support measure represents an advantage to the beneficiaries

(25) The financial support measures granted to the undertakings within the Project, presented in Annex no.2, 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

(26) 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.

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

5.2. Compatibility of the Individual state aid

(28) In assessing the compatibility of the individual state aid, the Competition Council, in view of the major impact of the support measures on regional development, 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

(29) The Competition Council assesses the State aid for investments based on the criteria provided in the Regulation on the regional State aid (hereinafter called Regulation).

5.2.1.1. State aid for initial investment

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

(31) 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.

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

- a) The initial investment financed within the Investment Projects aim to extend the existing units, according to paragraph 16 and 18. Thus, the State aid-financed Investment Projects fulfil the eligibility criterion regarding the initial investment, foreseen under Art. 5 (1) of the Regulation;
- b) In accordance with the facts mentioned in point 18, Annexes 4 and 5, the State aid does not aim to finance replacement investments for preserving the production potential but to finance new investments extending activities of undertakings, 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 5, the Individual state aid will not be granted to undertakings that are in economic-financial difficulty. Therefore, the provisions of art. 5 (2) (b) in the Regulation are fulfilled.

5.2.1.2. Eligible costs

(33) Granting the financial support to the undertakings 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.

(34) 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.

(35) In accordance with the facts mentioned in Annexes no.4 and 5, 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

(36) The beneficiary must contribute to finance the investments, within the beneficiary's projects, with at least 25% of the eligible costs, in accordance with the provisions of article 8 (1) of the Regulation.⁴

(37) Based on the facts mentioned in Annexes no.4 and 5, the Competition Council notes that the undertaking's financing from own resources within the Investment Projects is of minimum 25% of the eligible costs.

⁴ This minimum contribution of 25% of the eligible costs cannot be subject to another State aid (art. 8 (2) in the Regulation).

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

5.2.1.4. Aid intensity

(39) 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.

(40) Based on the facts mentioned in Annex no.5, the Competition Council notes that the aid intensity is of maximum 50% of the Project's eligible costs.

(41) Therefore, the Competition Council considers that the provisions of article 9 of the Regulation on regional State aid.

5.2.1.5. Maintaining the investment

(42) In accordance with article 11 of the Regulation on regional state aid, 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.

(43) In accordance with the facts mentioned at paragraph 14, the Competition Council notes that the granting of the notified individual state aid is conditioned by maintaining the investment for a minimum period of 5 years, fulfilling this way the provisions of article 11 of the Regulation on regional State aid.

5.2.1.6. The State aid's stimulating effect

(44) The Competition Council notes that AVAS has notified the individual state aid granted at privatization to the undertakings presented in Annex 1A. In light of the points made at point 4.2., it can be seen that, by granting the individual State aid for making investments it is aimed at developing the areas where these are located having as a result the economic growth.

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

5.2.1.7. Cumulation

(46) In accordance with the provisions of art. 16 of the Regulation, the ceilings for the aid intensity mentioned at paragraph 39 apply to the total aid. This also applies when the beneficiary receives at the same time aid within other schemes, from different sources, for the same investment project: local, regional, national or community.

(47) According to the information presented in the notification, the Competition Council notes that AVAS shall monitor the activity of the undertakings benefiting of State aid allocations making sure that the granted State aid, cumulated with other State aids granted for the same objective, does not exceed the maximum allowed ceiling for the regional State aid's intensity, namely 50% gross.

5.3. . Conclusions

(48) The information presented in the notification submitted to the Competition Council lead to the conclusion that the individual State aid does not unduly affect the normal competitive environment and does not infringe the proper application of the international treaties Romania is part of.

(49) After the assessment, the Competition Council considers that the individual State aid granted to the undertakings, in the form of exemption from payment of debts towards the state budget, 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 to the undertakings presented in Annex no.1 to the current decision is considered State aid within the meaning of art. 2 (1) of Law no. 143/1999 on State aid, republished

Art. 2. Based on article 21 (2) (b) corroborated with article 23 (1) (f) of Law no. 143/1999 on State aid, republished, the individual State aid for regional development granted to the undertakings is authorised.

Art. 3. The maximum amount of the individual state aid granted to each undertaking subject to the present decision is presented in Annex no.5.

Art. 4. According to the provisions of article 32 of Law no.143/1999 on State aid, republished, AVAS shall submit to the Competition Council information regarding the Individual state aids for their inventorying and monitoring.

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 by interested parties 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 Authority for State Assets Recovery, 50 Cpt. Av. Alexandru Serbanescu str., sector 1, Bucharest;

PRESEDINTE

MIHAI BERINDE

ANNEX 1 (A and B) – [...] ⁵

ANNEX 2 - [...] ⁶

ANNEX 3 – [...] ⁷

ANNEX 4 – [...] ⁸

ANNEX 5 – [...] ⁹

⁵ Confidential information

⁶ Confidential information

⁷ Confidential information

⁸ Confidential information

⁹ Confidential information