



R O M A N I A

COMPETITION COUNCIL

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**DECISION OF THE COMPETITION COUNCIL
no. 19 as of 06.02.2006
ON THE STATE AID TO BE GRANTED TO
SC „PARC INDUSTRIAL GORJ” SA**

THE 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 Competition Law no. 21/1996, republished in the Official Gazette, Part I, no. 742 of 16.08.2005,

Taking into consideration the provisions of 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 regarding the regional state aid, enforced by Order of the President of the Competition Council no. 55/2004, published in the Official Gazette Part I, no. 340 of 19.04.2004, modified and completed by Order of the President of the Competition Council no. 221/2004, published in the Official Gazette, Part I no. 847 of 16.09.2004,

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

Based on the following reasons,

1. THE NOTIFICATION PROCEDURE

(1) By address no. 9246/MNT/31.10.2005, registered at the Competition Council with no. RS-AS 99/02.11.2005, the Ministry of Administration and Interior has notified, based on art. 15 of Law no. 143/1999 on state aid, republished, the individual state aid to be granted to SC

PARC INDUSTRIAL GORJ SA as part of the state aid scheme within article 7 of GO no. 65/2001 on the establishment and functioning of the industrial parks, approved with further modifications by Law no. 490/2002 and by article 24(13), article 250(1) point 9 and article 257(1) letter a) of Law 571/2003 on the Fiscal Code, with further modifications and completions.

(2) By the addresses no. CC 2730/14.11.2005, DAAS 1406/05.12.2005, CC/2852/15.12.2005 and DAAS/110/27.01.2006 additional information was requested from the Ministry of Administration and Interior in view of completion of the notification form. The state aid grantor and beneficiary have submitted to the Competition Council the requested information, by the addresses no. 9469/MNT/18.11.2005, no. 9469/MNT/07.12.2005, no. 9906/19.12.2005 and no. 38/30.01.2006, registered at the Competition Council with no.CC/2792/23.11.2005, CC/2837/12.12.2005, CC/2869/21.12.2005 and DAAS/111bis/31.01.2006. The notification became effective on 31.01.2006.

2. OBJECTIVE OF THE FINANCIAL SUPPORT

(3) The purpose of setting up Bumbesti- Jiu Industrial Park is to stimulate local and regional economic development by providing business infrastructure creating incentives for companies and entrepreneurs to manufacture high added value goods or services. The establishment and development of the industrial parks are known as mechanisms of economic growth, by attracting investments and increasing the number of jobs¹, ensuring the fast access and with reduced costs, to the technical infrastructure. They stimulate the competitive capacities within that region, making possible the capitalization of its own development potential. The State support is necessary and vital taking into account the need to efficiently use the highly qualified workers in the area, as well as the need to create the conditions for dealing with the excess of population from the deprived rural areas in the neighbourhood.

(4) The establishment of this new industrial park aims to accomplish the following objectives:

- the establishment of certain economic development strategic poles in the South- West Oltenia Development Region;
- the efficient use of the highly qualified workers and ceasing work force migration;
- creating incentives for attracting foreign and local capital;
- attracting certain strategic investors which would lead to the horizontal development of the industries;
- capitalisation of the potential of higher education local units by means of creating new jobs for recent higher education graduates.

¹ Se estimeaza ca investitia va crea aproximativ 310 noi locuri de munca;

3. DESCRIPTION OF THE STATE AID MEASURES

3.1. The legal basis for granting the aid

- GO no. 65/2001 on the establishment and functioning of industrial parks, approved by Law no. 490/2002²;
- Law no. 571/2003 on the Fiscal Code, with further modifications and completions;
- Order of the Minister of Development and Prognosis no. 264/2002 on the approval of the Guidelines on the granting and annulment of the industrial park status, published in the Of.M. of Romania Ist Part, no. 684/17.09.2002;
- The Project of the Minister of Administration and Interior on the granting of the industrial park status to SC „Parc Industrial Gorj” SA Bumbesti - Jiu.

3.2. The measures of financial support for SC PARC INDUSTRIAL GORJ SA

(5) The financial measures i.e. RON 1,179,517, notified by the Ministry of Administration and Interior, are to be granted to SC Parc Industrial Gorj SA in view of providing with the infrastructure required for the appropriate functioning of the park. To this end, SC PARC Industrial Gorj SA shall benefit from the following fiscal facilities:

- exemption from the payment of the tax on the buildings or constructions within the industrial park, amounting to RON 773,154;
- deduction from the taxable profit, amounting to 20% of the investments value (constructions investments or investments in the rehabilitation of constructions, internal infrastructure and connection infrastructure to the public utilities network) achieved by the 31st of December 2006, amounting to RON 406,363.

(6) As far as the deduction from the taxable profit is concerned, in accordance with art. 24(13) of the Fiscal Code, for the investments made within the industrial parks until 31.12.2006, it is granted a deduction from the taxable profit representing 20% from the amount of the investments in buildings, building rehabilitations, internal infrastructure and infrastructure made in order to get connected to the public utilities' network. In accordance with the information received from the grantor, the value of the investments estimated to be made by SC Parc Industrial Gorj SA until 31.12.2006 amounts 2,031,818 RON. Based on this it was calculated the deduction, as follows: $2,031,818 \times 20\% = 406,363$ RON. At the date when the investment will be put into function (31.12.2006), this deduction will be calculated only from the taxable point of view, by registering that sum in the annual tax declaration. In 2006, the company will benefit of a deduction corresponding to the profit of that year. If the profit's value is not high enough to cover the value of the deduction, as it was calculated *ex - ante*, the difference is to be recovered from the taxable profit obtained in the next 5 consecutive years.

² Order of the Minister of Development and Prognosis no. 264/2002 on the approval of the Guidelines on the granting and annulment of the industrial park status; Law no. 571/2003 on the Fiscal Code, with further modifications and completions; the Project of the Minister of Administration and Interior on the granting of the industrial park status to SC TETAROM SA, for the Bumbesti- Jiu Industrial Park.

(7) The exemption from the payment of the tax on the buildings or land within the industrial park is granted during 2006-2010, in annual tranches and has a total discounted value of RON 773,154. In accordance with the information submitted by the state aid beneficiary, the amount of the exemptions from the payment of the tax on buildings and tax on land were calculated based on the tax on buildings and tax on land progressively increased with 4%, namely 3% (progressive percentage which took into consideration the average increases of those taxes, from the last years), as follows:

Table no.1 Discounting the value of the state aid under the form of exemption from the payment of the tax on land and buildings

	Discounted value of the state aid (RON)					Total
	2006	2007	2008	2009	2010	
The discounted tax value on land	76,248	78,536	80,892	83,319	85,818	404,813
The discounted tax value on buildings	68,006	70,726	73,555	76,497	79,557	368,341

Source: Supplementary Informations

4. THE BENEFICIARY OF THE SUPPORT MEASURES (SC PARC INDUSTRIAL GORJ SA)

(7) The Beneficiary of the financial measures granted by the state is SC Parc Industrial Gorj SA, as the managing company of Bumbesti- Jiu Industrial Park, having as sole shareholder the Gorj County Council. The company is registered at the Trade Register with no. J18/326/18.04.2003, CUI R 15400994, has an equity of RON 1,902,900 and the office headquarters in the locality Bumbesti- Jiu, str. Bumbesti, nr. 462, judetul Gorj.

(8) The Competition Council considers that the services provided by SC Parc Industrial Gorj SA, namely the management of the industrial park, can be considered as falling within public service concession. SC Parc Industrial Gorj SA's incomes result mainly from the collection of rental income from occupiers of the units, as well as management costs. The guidelines on the public service concession do not apply in case the above-mentioned services are provided "in-house"³. As set out in paragraph (6) of the decision, the majority of the company's shares are held by the Gorj County Council, which appoints and exercises influence over the management team. Based on the information submitted by the grantor, SC Parc Industrial Gorj SA does not exercise a high degree of independence from the local authorities. Therefore, the local authorities exercise the same influence over SC Parc Industrial Gorj SA as they do over any other subordinated Department.

³ See ECJ Decision C-458/03 (13/10/05) Parking Brixen GmbH.

(8) At the end of 2004, Bumbesti – Jiu Industrial Park had 157 employees, and a turnover of RON 141,470.3.

(9) According to point 8 of art. 2 of the Regulation on state aid for SMEs, modified by the Regulation of 01.02.2005 on the modification and completion of the Regulation on state aid for SMEs, an enterprise is not considered a SME if at least 25% of its share capital or voting rights are directly or indirectly controlled by one or more bodies or public entities, excepting the cases mentioned at point 6 of art. 2 of the Regulation, respectively autonomous local authorities having an annual budget lower than the RON equivalent of EUR 10 million and less than 5,000 inhabitants. The company's equity is entirely public, the sole shareholder being the Gorj County Council, a local authority having an annual budget higher than the RON equivalent of EUR 10 million and more than 5,000 inhabitants. Thus, SC Parc Industrial Gorj SA is not considered a SME.

(10) The core business of SC Parc Industrial Gorj SA is represented by the “renting and sub-renting of its own or rented real estates” (CAEN code 7020). The company carries out activities specific to the management of an industrial park, as follows:

- realizing infrastructure of Bumbesti- Jiu Industrial Park;
- rental of the park spaces to natural and legal persons;
- providing utilities and services required by activities carried out by various companies located in the managed park;
- constructions and installations repairing and maintenance;
- maintenance of the access routes;
- organisation and management of the information system concerning business opportunities.

(11) Bumbesti- Jiu Industrial Park is located in the locality Bumbesti – Jiu, on a 13.91 ha land. The land is in the private property of SC Parc Industrial Gorj SA, neighbours at North with UM Sadu (an electro-power plant), at East with UM Sadu and other lands private properties and at West has access to the county road DC3 leading to the national road DN 66.

(12) The industrial park shall have the following specialisations:

- mechanical processing for bench-marks and sub-assemblies from the mining and power industry;
- processing of sub-assemblies from the electro-technical industry;
- Light industry (processing fabrics, confection Eláter articles, etc.);
- Wood processing.

(13) The Bumbesti- Jiu Industrial Park is located in the South- West Oltenia Development Region. The Ministry of Administration and Interior stated that in this region there is only one more industrial park, namely at Corabia, Olt County.

5. THE STATE AID CHARACTER OF THE FINANCIAL SUPPORT MEASURES TO BE GRANTED TO THE COMPANY

(14) The financial support measures to be granted to SC Parc Industrial Gorj SA may provide the company with an advantage against its competitors and thus might distort the

competition. The financial measures are eligible to constitute state aid within the meaning of art. 2 of Law no. 143/1999 on state aid, republished, and the Competition Council must therefore assess their compatibility with a normal competitive environment.

(15) In the process of assessment of the financial support measures, the Competition Council noted that there is no doubt these are financed from state resources and have a selective character, providing an advantage to SC Parc Industrial Gorj SA. Neither is there any doubt that these measures are also to affect trade with the Member States of the European Union.

(17) In conclusion, the financial support measures to be granted are considered state aid and fall under the provisions of Law no. 143/1999 on state aid, republished.

6. ASSESSMENT OF THE STATE AID MEASURES TO BE GRANTED TO SC PARC INDUSTRIAL GORJ SA

(17) The state aid subject to the present decision is to be granted in order to realise the appropriate Bumbesti- Jiu Industrial Park infrastructure, leading to the economic regeneration of the region, by means of attracting local undertakings.

(18) As provided by art. 23 (1) (f) of Law no. 143/1999 on state aid, republished, the Competition Council can authorize measures which constitute state aid in accordance with the Regulation on regional state aid (hereafter called Regulation) . Within the meaning of this regulation, the state aid can be granted for *initial investment* (Chapter II) or *for the creation of jobs* (Chapter III). In exceptional cases, operating state aid can be granted (Chapter IV).

6.1. Aid for initial investment

(19) In the present case, the state aid is designed for initial investment, within the meaning of the provisions of Chapter II of the Regulation.

(20) Within the meaning of art. 5 of the Regulation, an initial investment is represented by the capital investment in connection with the creation of a new entity, the extension of an existing one or the launch of an activity implying a fundamental change in the product or the manufacturing process of an existing entity, by means of rationalization, diversification or modernization.

(21) In the analyzed case, the state aid intended to be granted is designed to complete the infrastructure works in Bumbesti- Jiu Industrial Park, leading to the creation of new investments which have as finality the creation of some production facilities. The total estimated cost of the project according to criteria set in advance amounts to RON 7,388,166.8 broken down as follows:

Table no. 1		Estimated cost
No. crt.	Item description	- RON - Amount (VAT excluded)
	ELIGIBLE COSTS	
1	Costs for preparing the land, total	8,395.0
	From which:	
	- Systematizing the land	8,395.0
2	Costs for environmental protection, total	27,922.5

	From which: - Reconstruction of the natural environment	27,922.5
3	Costs for making the constructions and installations for the buildings, total From which: - Mechanic processing hall + annex - canteen - auto garage and platform + auto-repairs workshop + electrocarts workshop - splinter house - auto cover - carpentry workshop + carpentry annex - neutralizing station - warehouses - laboratory - workshops - timber shed - workshop + technical annex - medical unit - managers' pavilion - enclosures and gates - water supplying network - contouring elements	6,943,788.5 2,131,512.4 149,069.7 210,473.6 5,369.2 88,760.7 796,872.9 94,425.4 686,200.0 146,018.3 382,501.7 118,398.7 799,817.2 57,910.9 656,806.5 208,551.2 345,561.2 65,538.9
A	TOTAL ELIGIBLE COSTS	6,980,106.0
	NEELIGIBLE COSTS	
4	Costs for obtaining notes, agreements and authorizations	4,600.8
5	Costs necessary for designing and engineering, total From which: - feasibility study - technical project; execution details; task notebooks	7,668.1 547.5 7,120.6
6	Other costs, total From which: - organizing the yard different and unpredictable costs	395,791.9 118,042.2 277,749.7
B	TOTAL NEELIGIBLE COSTS	408,060.8
	TOTAL GENERAL (A+B)	7,388,166.8

Source: Supplementary information MAI

(22) The state aid is designed for new investments having as finality the creation of some production facilities (respectively infrastructure) which meet the characteristics provided by art. 5 of the Regulation on regional aid in order to be considered aid for initial investment.

(23) The state aid does not have the purpose of replacing an existing investment designed to preserve the production potential or to financially restructure an enterprise in difficulty.

Therefore, the provisions of art. 5 (2) (a) of the Regulation, on replacement investment for preserving production potential and of art. 5 (2) (b) on aid measures for the financial restructuring of a firm in difficulty are met.

(24) From the estimated data presented above it results that the total value of the incomes brought by this project within the first 20 years of existence of the industrial park amounts RON⁴ 53,709,195.05 (namely an average annual income of RON⁵ 2,685,459.76), and the total value of the costs amounts RON⁶ 11,960,844.75 (namely an annual average of RON 598,042.24). The annual average of the profit estimated for the same period is of RON⁷ 2,087,417.52, and the internal economic rentability rate is of approx. 51%. From the assessment of these indicators it can be observed the economic- financial development of the Bunbesti – Jiu Industrial Park, and therefore, of the area it is located in.

(25) Given the above it can be concluded that the finalization of the investments works in the industrial park will substantially contribute to the local development, both of the locality Bumbesti- Jiu, as well as of the adjacent area, by the significant economic and business concentration. The concentration of economic activities in a certain area, valuing the local human and material resources does not disturb the competitive environment, but on the contrary contributes to its fostering.

6.2. Eligible costs

(26) In this case the rules regarding eligible costs for investments in tangible assets are applied.

(27) According to art. 6 (1) of the Regulation, the aid for initial investment is calculated as a percentage of the investment value. According to art. 6 (2) this value is set based on a set of expenses corresponding to the investment elements, respectively land, buildings and equipments forming the standard base provided in annex no. 2 to the Regulation⁸.

(28) As presented in paragraph 21, table no. 1, out of the total value of the investment project the following costs are considered eligible: land settlement, utilities and costs related to buildings and installations afferent to the basic investment.

(29) In the case of the infrastructure project in the Bumbesti- Jiu Industrial Park, the total value of eligible costs is RON 6,980,106 and represents investments in tangible assets required to complete infrastructure works of the industrial park (buildings, equipment, technological outfit, installations forming the standard base) meeting in this way the conditions imposed by art. 6 of the Regulation.

⁴ 14.758.922,55 Euro, calculat la cursul valutar BNR de 1 Eur=3,6391 RON, din data de 13.01.2006;

⁵ 737.946,13 Euro, calculat la cursul valutar BNR de 1 Eur=3,6391 RON, din data de 13.01.2006;

⁶ 3.286.759,02 Euro, calculat la cursul valutar BNR de 1 Eur=3,6391 RON, din data de 13.01.2006;

⁷ 573.608,18 Euro, calculat la cursul valutar BNR de 1 Eur=3,6391 RON, din data de 13.01.2006;

⁸ In the case of an acquisition, only the costs of the three asset categories from the standard base must be taken into consideration, with the condition the transaction takes place in market conditions. The value of the assets whose acquisition benefited already of an aid before their purchase will be deducted. In the case where the acquisition is accompanied by another initial investment, the expenses related to the latter are to be added to the acquisition costs.

6.3. The contribution of the beneficiary

(30) In order to guarantee a viable and efficient level of the initial investments benefiting from aid, the contribution of the beneficiary to the their financing must be of at least 25% (art. 8 (1) of the Regulation on regional state aid). This minimum contribution of 25% can not be subject of a state aid (art. 8 (2) of the Regulation).

(31) According to information provided by MAI the beneficiary of the state aid will contribute to the initial investment with RON 2,031,818 representing 29.11% from the total eligible costs (RON 6,980,106). This value is higher than the upper limit of 25% imposed through art. 8 of the Regulation on regional state aid.

6.4. State aid intensity

(32) According to art. 9 of the Regulation, the gross intensity of the regional aid must not be higher than 50% of the net grant equivalent.

(33) The value of the notified state aid is RON 1,179,517 and the eligible costs of the project are RON 6,980,106. The calculation shows an intensity of 16,9%, observing the criteria of art. 9 of the Regulation providing that the gross intensity of the regional aid can not be higher than 50% for large enterprises.

6.5. Maintenance of the investment

(34) According to art. 11 of the Regulation, the aid for initial investment must be conditioned, through the allocation method or through obtaining conditions, by the maintenance of the investment for a minimum period of five years.

(35) The Ministry of the Administration and Interior specifies in the notification form that it imposed to the beneficiary the maintenance of the investment in the industrial park for a period of at least 20 years. Thus, the condition provided by art. 11 of the Regulation on regional state aid to maintain the investment for a period of at least 5 years is met.

6.6. Cumulation of state aids

(36) According to provisions of art. 16 of the Regulation, the 50% ceiling of the gross aid intensity is applied to the total aid, when the beneficiary receives in the same time aids within several regional schemes, irrespective of the fact that funds derive from local, regional, national or Community sources. As provided at point 6.4 of the present decision, this criteria has been fulfilled.

(37) The Ministry of Administration and Interior will monitor the activity of SC Parc Industrial Gorj SA in order to ensure that the granted state aids, cumulated with state aids granted for the same objective within other schemes, do not go beyond the maximum allowed intensity of 50% provided by the Regulation on regional state aid, as later amended and supplemented.

7. CONCLUSIONS

(36) Information presented in the notification submitted to the Competition Council leads to the conclusion that the state aid intended to be granted to SC PARC INDUSTRIAL GORJ SA to complete infrastructure works in Bumbesti-Jiu Industrial Park is not affecting significantly the normal competitive environment and does not infringe on the application of international treaties Romania is a part of.

(39) Subsequent to the performed analysis it has been noted that the state aid in total amount of RON 1,179,517 consisting in the co-financing of infrastructure works in the Bumbesti-Jiu Industrial Park, meets the granting criteria according to the Regulation on regional state aid, as later amended and supplemented.

DECIDES

Art. 1. The measure notified by the Ministry of Administration and Interior, having as beneficiary SC Parc Industrial Gorj SA, constitutes state aid within the meaning of art. 2 of Law no. 143/1999 on state aid, republished.

Art. 2. Based on art. 21 (2) (c) coupled with art. 23 (1) (f) from Law no. 143/1999 on state aid, republished, the specific individual allocation of regional development state aid to be granted to SC Parc Industrial Gorj SA as a part of the state aid scheme provided by the GO no. 65/2001 and art.24 (13), art. 250 (1) (9) and art. 257 (1) (a) of the Law 571/2003 on the Fiscal Code, with the subsequent amendments and completions, is authorized conditioned by the observance of art. 3 and art. 4 from the present Decision.

Art. 3. The company commits to the maintenance of the investment for a minimum of 5 years, if otherwise the state aid will be recovered, according to the law.

Art. 4. The Ministry of Administration and Interior will follow that the aid granted to SC Parc Industrial Gorj SA does not surpass the maximum aid intensity provided by the regulations in force and the criteria for the cumulation of state aids for the same objective and beneficiary.

Art. 5. The maximum value of the state aid of which SC Parc Industrial Gorj SA can benefit to finalize the infrastructure works in Bumbesti-Jiu Industrial Park is of RON 1,179,517.

Art. 6. The present Decision becomes applicable at the date of its communication.

Art. 7. According to provisions of art. 32 from Law no.143/1999 on state aid, republished, the Ministry of Administration and Interior will submit annually to the Competition Council information regarding the state aid subject to the present Decision, in order to inventory the state aids.

Art. 8. According to provisions of art. 46 from Law no.143/1999 on state aid, republished, the present Decision can be appealed by interested parties to the Court of Appeals Bucuresti, the Administrative Litigation Section within 30 days from its communication.

Art. 9. The present Decision will be communicated by the Secretariat General of the Competition Council to:

- Ministry of Administration and Interior, Piata Victoriei nr. 1, sector 1, Bucharest;
- SC PARC INDUSTRIAL GORJ SA, locality Bumbesti-Jiu, str. Bumbesti nr. 462, Gorj County.

PRESIDENT

MIHAI BERINDE