



R O M A N I A

COMPETITION COUNCIL

www.consiliulconcurentei.ro

**Piata Presei Libere
nr.1, sector 1
Bucuresti**

λ

Cabinet Presedinte

**Tel: 021.223.11.99; Fax: 021. 222.26.14
mihai.berinde@rccomp.eunet.ro**

**DECISION OF THE COMPETITION COUNCIL
no. 1 as of 4.01.2006
ON THE STATE AID TO BE GRANTED TO
SC TETAROM 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 the Regulation regarding the form, content and other details of a state aid's notification, published in the Official Gazette, Part I no. 82 of 25.01.2005;

Taking into consideration the provisions of the Regulation regarding the state aid for small and medium sized enterprises, published in the Official Gazette, Part I no. 340 of 19.04.2004, with the subsequent amendments and completions;

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. 8103/MNT/09.11.2005, registered at the Competition Council with no. RS-AS 108/14.11.2005, the Ministry of Administration and Internal Affairs has notified, based on art. 15 of Law no. 143/1999 on state aid, republished, the individual state aid to be granted to SC TETAROM SA as part of the state aid scheme enclosed by 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 address no. CC/2794/24.11.2005, additional information was requested from the Ministry of Administration and Internal Affairs in view of completion of the notification form. On the 28th of November 2005, the state aid grantor submitted to the Competition Council the requested information, as well as the Feasability study of TETAROM 2 Industrial Park and the documentation required for obtaining the industrial park status. The notification became effective on the 28th of November 2005.

2. OBJECTIVE OF THE FINANCIAL SUPPORT

(3) The purpose of setting up TETAROM 2 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. State support is necessary and vital considering the necessity of using the highly qualified workers in the region, as well as the need to create appropriate conditions for the working integration of the population surplus within the deprived rural areas surrounding Cluj town. It is expected that the support lead to the economic regeneration of the area and to the creation of new jobs for the local community.¹

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

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

¹ The investment is expected to create approximately 600 new jobs in the first year of functioning of the industrial park and approximately 2,000 new jobs after 5 years;

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. 490/2002;²
- the Law no. 571/2003 on the Fiscal Code, with the subsequent amendments and completions.

3.2. The measures of financial support for SC TETAROM SA

(5) The financial measures i.e. RON 718,356, notified by the Ministry of Administration and Internal Affairs are to be granted to SC TETAROM SA in view of providing with the infrastructure required for the appropriate functioning of the park. To this end, SC TETAROM 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 51,300;
- 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 667,056.

4. THE BENEFICIARY OF THE SUPPORT MEASURES (SC TETAROM SA)

(6) The Beneficiary of the financial measures granted by the state is SC TETAROM SA, as the managing company of TETAROM 2 Industrial Park Cluj Napoca. Cluj County Council associated with Cluj Napoca Local Council, Dej Local Council, Gherla Local Council, Huedin Local Council, Turda Local Council and Campia Turzii Local Council, in view of obtaining the industrial park status, by means of establishment of the SC TETAROM SA managing company.³ The company is registered at the Trade Register with no. J12/1683/12.12.2001, CUI R 14343629, has equity of RON 743,970 and the office headquarters in Cluj Napoca, no. 58, 21 Decembrie 1989 street, Cluj County.

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 TETAROM 2 industrial park.

³ The stock ownership structure of SC TETAROM SA is at follows:

- Cluj County Council owns 98.38% of the equity;
- Cluj Napoca Local Council owns 0.056% of the equity;
- Dej Local Council owns 0.013% of the equity;
- Gherla Local Council owns 0.755% of the equity;
- Huedin Local Council owns 0.013% of the equity;
- Turda Local Council owns 0.028% of the equity;
- Campia Turzii Local Council owns 0.755% of the equity.

(7) The Competition Council considers that the services provided by SC TETAROM SA, namely the management of the industrial park, can be considered as falling within public service concession. SC TETAROM 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"⁴. As set out in paragraph (6) of the decision, the majority of the company's shares are held by the Cluj County Council, which appoints and exercises influence over the management team. Based on the information submitted by the grantor, SC TETAROM SA does not exercise a high degree of independence from the local authorities. Therefore, the local authorities exercise the same influence over SC TETAROM SA as they do over any other subordinated Department.

(8) At the end of 2004, SC TETAROM SA had 10 employees, and a turnover of RON 57,958.

(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 main shareholder being Cluj County Council (98.38% of the equity), a local authority having an annual budget higher than the RON equivalent of EUR 10 million and more than 5,000 inhabitants. Thus, SC TETAROM SA is not considered a SME.

(10) The core business of SC TETAROM SA is represented by the "management of real estate based on tariffs or contract" (CAEN code 7032). The company carries out activities specific to the management of an industrial park, as follows:

- realizing infrastructure of TETAROM 2 Cluj Napoca 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) TETAROM 2 Cluj Napoca Industrial Park is located in the north-east of Cluj Napoca, on a 12 ha land. The land is in the private property of SC TETAROM SA and has access to DN 1 C (E 576).

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

- IT sector - software, hardware production, computer networks, computer manufacturing/assembling;
- sector of automation, robotics, printed/non-printed circuit boards;

⁴ See ECJ Decision C-458/03 (13/10/05) Parking Brixen GmbH.

- telecommunications sector - telephony, telecommunications software, telecommunications network, security and transport equipment;
- household goods with high added value;
- car industry - processing of aluminum car components, cables, electrical components;
- research-development in the above-mentioned sectors;
- electrotechnical industry.

(13) The TETAROM 2 Industrial Park is located in the North-West Development Region. The Ministry of Administration and Internal Affairs stated that 3 industrial parks already exist in this region, namely Jibou Industrial Park, Dej Industrial Park and Tetarom 1 Industrial Park.

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 TETAROM 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 TETAROM 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 TETAROM SA

(17) The state aid subject to the present decision is to be granted in order to realise the appropriate TETAROM 2 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 Industrial Park TETAROM 2, 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 3,120,000 broken down as follows:

Table no. 1		Estimated cost	- RON -
No.	Item description	Amount (VAT excluded)	
	ELIGIBLE COSTS		
1	Land preparation, total of which: - land preparation - environmental protection fittings	230,025	
		216,000	
		14,025	
2	Utilities costs, total of which: - electricity connection 5 MW - water connection - gas connection	1,418,400	
		1,241,000	
		88,700	
		88,700	
3	Core investment costs, total of which: - buildings and installations, roads, platforms and utilities within the precinct	1,125,575	
		1,125,000	
A	TOTAL ELIGIBLE COSTS	2,774,000	
4	Design and technical assistance costs, total of which: - field studies - obtaining agreements, approvals and authorisations - design and engineering - organising the public procurement procedure - consultancy - technical assistance	163,000	
		13,900	
		2,100	
		106,350	
		8,500	
		7,000	
		25,150	
5	Other expenses, total of which:	159,800	

	- organisation of the building site	27,100
	- commissions, taxes, legal fees, financing costs	64,900
	- sundry and unforeseen expenses	67,800
6	Costs of setting into function, total of which:	23,200
	- training of the operational personnel	23,200
B	TOTAL NON-ELIGIBLE COSTS	346,000
	GENERAL TOTAL (A+B)	3,120,000

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) The Beneficiary of the state aid estimated that revenues brought in by the project in the first 9 years will be approximately RON 217,867 with total operating expenses of RON 120,638. The estimated average annual turnover for 2006-2010 is RON 43,573 and the average net profit estimated for the same period is RON 19,445. The figures above provide a positive indication of the economic and financial development of Industrial Park TETAROM 2 and implicitly the region.

(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 city of Cluj Napoca, 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 Regulation⁵.

(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 Industrial Park TETAROM SA, the total value of eligible costs is RON 2,774,000 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.

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 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 AVAS the beneficiary of the state aid will contribute to the initial investment with RON 700,000 representing 25.23% from the total eligible costs (RON 2,774,000). 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 718.356 and the eligible costs of the project are RON 2,774,000. The calculation shows an intensity of 25.9%, 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

⁵ 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.

period of at least 5 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 Internal Affairs will monitor the activity of SC TETAROM 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 TETAROM SA to complete infrastructure works in Industrial Park TETAROM 2 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 718,356 consisting in the co-financing of infrastructure works in the Industrial Park TETAROM 2, 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 Internal Affairs, having as beneficiary SC TETAROM 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 TETAROM SA as a part of the state aid scheme provided by art. 7 of GO no. 65/2001, 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 Internal Affairs will follow that the aid granted to SC TETAROM 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 TETAROM SA can benefit to finalize the infrastructure works in Industrial Park TETAROM 2 is of RON 718,356.

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 Internal Affairs 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 Internal Affairs, Piata Victoriei nr. 1, sector 1, Bucharest;
- SC TETAROM SA, str. 21 Decembrie 1989 nr. 58, Cluj Napoca, Judetul Cluj.

PRESIDENT

MIHAI BERINDE