

COMPETITION COUNCIL DECISION
No. 211 from 11.10.2006
on the financial support measures granted over the maximum intensity
to certain undertakings carrying on activity
in the deprived areas

THE COMPETITION COUNCIL,

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

Having regard to the provisions of the Law no.157/2005 for ratifying the Treaty between Belgium Kingdom, Czech Republic, Kingdom of Denmark, Federal Republic of Germany, Republic of Estonia, Republic of Greece, Kingdom of Spain, French Republic, Ireland, Republic of Italy, Republic of Cyprus, Republic of Latvia, Republic of Lithuania, Great Duchy of Luxemburg, Republic of Hungary, Republic of Malta, Kingdom of Netherlands, Republic of Austria, Republic of Poland, Republic of Portugal, Republic of Slovenia, Republic of Slovak, Republic of Finland, Kingdom of Suede, United Kingdom of Great Britain and Northern Ireland (member states of European Union) and Republic of Bulgaria and Romania regarding the accession of Republic of Bulgaria and of Romania to European Union, signed by Romania at Luxemburg on 25 April 2005, published in the Official Journal of Romania, Part I, no 465 from 01.06.2005,

Having regard to the provisions of Competition Law no 21/1996, republished in Official Journal of Romania, Part I, no 742 on August 16th, 2005,

Having regard to the provisions of Law no 143/1999 on State aid republished in the Official Journal of Romania, Part I, no 744 on August 16th, 2005,

Having regard to the provisions of the Regulation on the investigation procedure in the State aid field, published in Official Journal of Romania, Part I, no 257 on March 28th, 2005,

Having regard to the provisions of the Regulation on regional State aid, published in Official Journal of Romania, Part I, no 340 on April 19th 2004, with subsequent amendments and completions,

Having regard to the provision of the Regulation on state aid for SME's, published in Official Journal of Romania, Part I, no 340 on April 19th 2004, with subsequent amendments and completions,

Having regard to the provisions of the Guidelines on interests level in the case of recovery or reimbursement of an illegal or forbidden state aid, 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

Having regard to the provision of Law no. 571/2003 on Fiscal Code, published in Official Journal, of Romania, Part I, no. 927 on December 23rd, 2003,

Having regard to the provision of G.E.O. no. 129/2005 to modify and complete G.O. no. 92/2003 on Fiscal Procedure Code, published in Official Journal of Romanian, Part I, no. 887 on October 4th, 2005,

Having regard to the provisions of G.E.O. no. 24/1998 on the deprived areas, republished in Official Journal of Romania, Part I, no. 545 on November 8th, 1999, with subsequent amendments and completions,

Having regard to the provisions of the Romanian President Decree no 57/2004 for the appointment of the Competition Council members, published in Official Journal of Romania, Part I, no 143 on February 17th, 2004,

Having regard to the provisions of the Romanian President Decree no 1087/2006 for the appointment of one member in Competition Council Plenum, published in Official Journal of Romania, Part I, no 767 on September 8th, 2006,

Having regard to the provisions of the Romanian President Decree no 1088/2006 for the appointment of one member in Competition Council Plenum, published in Official Journal of Romania, Part I, no 767 on September 8th, 2006,

Having regard to the provisions of the Romanian President Decree no 1089/2006 for the appointment of one vice-president in Competition Council Plenum, published in Official Journal of Romania, Part I, no 767 on September 8th, 2006,

Having regard to the Report drafted by the case handler and the investigation team following the observations during the investigation opened through the Order of the Competition Council's President no 164/04.07.2006,

Based on the following,

I. PROCEDURE

(1) Based on the provision of art. 38 par. (3) of the Law no. 143/1999 on state aid, republished¹, the Competition Council have carried out control activities, during March – June 2006, on a number of 1497 undertakings, situated in 28 deprived areas. These control actions have been finalized by Finding Notes, signed both by the Competition Council representatives and those of the controlled undertakings.

(2) Following the analyses of those Finding Notes it was drawn up a Report on monitoring action results of a regional state aid granted to the undertakings with permanent investor certificate in deprived area, registered as DRMCAS/647/16.06.2006, in which are record

¹ Law no 143/1999 on state aid, republished in Official Journal no 744/16.08.2005

aspects observed during the verified actions. From 1497 verified undertakings, a number of six exceeded the maximum admissible level of the state aid intensity:

- **SC ITALSTEI SRL**, Stei, 7 M. Pompiliu Street, Stei-Nucet deprived area, Bihor County, J05/488/1999, unique registration code 11948774. The undertaking is a S.M.E. and has the investor certificate no. 147/04.02.2000 in deprived area Stei-Nucet and it develops the activity of „Manufacturing of textile articles (except closing and underwear)” – NACE code 1740.
- **SC GEMARK RECORDS SRL**, Petrosani, 97/3 1st December, Valea Jiului deprived area, Hunedoara County, J20/2398/1992, unique registration code 2672750. The undertaking is a S.M.E. and has the investor certificate no. 575/09.03.2001 and it develops the activity of „Retail, unspecialized, with food, drinking and tobacco” –NACE code 5139.
- **SC LAS PAN SRL**, Petrosani, 6A Livezeni street, Valea Jiului deprived area, Hunedoara County, J20/136/2000, unique registration code 13153197. The undertaking is a S.M.E. and has the investor certificate no. 427/25.03.2000 and it develops the activity of „Retail with dry goods, glass and paint” –NACE code 5246.
- **SC VISA SA**, Petrosani, 4/2 Closca Street, Valea Jiului deprived area, Hunedoara County, J20/1105/1994, unique registration code 6146812. The undertaking is a S.M.E. and has the investor certificate no. 12/06.08.1999 and it develops the activity of „Business and management consultancy” –NACE code 7414.
- **SC EURO MARCA COMPANY SRL**, Ip, 265/F Principala Street, Ip deprived area, Salaj County, J31/1/2000, unique registration code 12601608. The undertaking is a S.M.E. and has the investor certificate no. 502/14.08.2000 and it develops the activity of „Freight transport by road” –NACE code 6024.
- **SC MOBFOREST SRL**, Poiana Stampei, 8 Casoi village, Bucovina deprived area, Suceava County, J33/313/1999, unique registration code 11963596. The undertaking is a S.M.E. and has the investor certificate no. 53/20.12.1999 and it develops the activity of „Sawmilling and planning of wood, impregnation of wood” – NACE code 2010.

(3) In 29.06.2006, based on the Note of the Reporting, Monitoring and Control State Aid Department, DRMCAS/665/29.06.2006, it was proposed to open an *ex officio* investigation procedure; thus the Order of the President of the Competition Council no 164/04.07.2006 was issued. The Order was communicated to the grantor, Ministry of Public Finances, and to the six undertakings beneficiaries of state aid, respectively:

- **SC ITALSTEI SRL**, Stei, 7 M. Pompiliu Street, Stei-Nucet deprived area, Bihor County.
- **SC GEMARK RECORDS SRL**, Petrosani, 97/3 1st December, Valea Jiului deprived area, Hunedoara County.
- **SC LAS PAN SRL**, Petrosani, 6A Livezeni Street, Valea Jiului deprived area, Hunedoara County.

- **SC VISA SA**, Petrosani, 4/2 Closca Street, Valea Jiului deprived area, Hunedoara County.
- **SC EURO MARCA COMPANY SRL**, Ip, 265/F Principala Street, Ip deprived area, Salaj County.
- **SC MOBFOREST SRL**, Poiana Stampei, 8 Casoi village, Bucovina deprived area, Suceava County.

(4) Through the address no. DRMCAS/671/06.07.2006, the Competition Council requested to the investigated undertakings to communicate the information considered to be state or work secret, in order to publish the investigation opening Order and the Note based on which the later was issued on the official web of the Competition Council. From these six undertakings, only SC EURO MARCA COMPANY SRL sent by address no. 16/07.07.2006, registered at the Competition Council as DRMCAS/674bis/10.07.2006, its approval to publish integrally the mentioned documents. Because the other fifth undertakings did not answer in the limit term established by Competition Council address, mentioned above, the investigation team considered that these accepted tacitly the integrally publication of the information from the Note and from the investigation opening Order.

(5) By the address no. DRMCAS/675/11.07.2006, the Competition Council informed the state aid grantor, respectively the Ministry of Public Finance (MPF), on opening the investigation at the undertakings mentioned above, asking for its point of view in 7 days term from the investigation opening Order publication.

(6) The investigation Order and the Note on which was based its issuing were integrally published on the official web of the Competition Council, according to the provisions of Law no 143/1999 on State aid republished and the provisions of the Regulation regarding the investigation procedure in the State aid field², in order to allow all interested parties to send their comments in 7 days from the publication date.

(7) The Competition Council did not receive any comments from MPF, the beneficiaries or any other interested parties, in the period of time established through the Order for opening investigation (7 days from the publication date).

(8) During the investigation the Competition Council required to the investigated undertakings to sent, **until 20.07.2006**, some additional information, as it follows:

- **SC ITALSTEI SRL – the Competition Council address no. DRMACAS/681/12.07.2006:**
 - the state aid value, consist of exemption from the payment of profit tax, of which benefited **on each quarter** during **2003 – 2005**;
 - copies of the balance sheet for **2003** and **2004**;
 - copies of the declarations on profit tax (100 form) **quarterly** consigned at the Public Finance Administration during **2003 – 2005**;

² Regulation regarding the investigation procedure in the state aid field, published in Official Journal no. 257/28.03.2005

- copies of the **annual** declarations on profit tax (101 form) consigned at the Public Finance Administration during **2003 – 2005**;
 - copies of other justified documents, including rectified fiscal declarations (if it is the case).
- **SC GEMARK RECORDS SRL – the Competition Council address no. DRMACAS/682/12.07.2006:**
- the state aid value, consist of exemption from the payment of profit tax, of which benefited **on each quarter** during **2003 – 2005**;
 - copies of the balance sheet for **2003 - 2005**;
 - copies of the declarations on profit tax (100 form) **quarterly** consigned at the Public Finance Administration during **2003 – 2005**;
 - copies of the **annual** declarations on profit tax (101 form) consigned at the Public Finance Administration during **2003 – 2005**;
 - copies of other justified documents, including rectified fiscal declarations (if it is the case).
- **SC LAS PAN SRL – the Competition Council address no. DRMACAS/683/12.07.2006:**
- the state aid value, consist of exemption from the payment of profit tax, of which benefited **on each quarter** during **2003 – 2005**;
 - copies of the balance sheet for **2003 - 2005**;
 - copies of the declarations on profit tax (100 form) **quarterly** consigned at the Public Finance Administration during **2003 – 2005**;
 - copies of the **annual** declarations on profit tax (101 form) consigned at the Public Finance Administration during **2003 – 2005**;
 - copies of other justified documents, including rectified fiscal declarations (if it is the case).
- **SC VISA SA – the Competition Council address no. DRMACAS/684/12.07.2006:**
- the state aid value, consist of exemption from the payment of profit tax, of which benefited **on each quarter** during **2003 – 2005**;
 - copies of the balance sheet for **2003 - 2005**;
 - copies of the declarations on profit tax (100 form) **quarterly** consigned at the Public Finance Administration during **2003 – 2005**;
 - copies of the **annual** declarations on profit tax (101 form) consigned at the Public Finance Administration during **2003 – 2005**;
 - copies of other justified documents, including rectified fiscal declarations (if it is the case).
- **SC EURO MARCA COMPANY SRL – the Competition Council address no. DRMACAS/685/12.07.2006:**
- the state aid value, consist of exemption from the payment of profit tax, of which benefited **on each quarter** during **2003 – 2005**;
 - copies of the balance sheet for **2003 and 2004**;
 - copies of the declarations on profit tax (100 form) **quarterly** consigned at the Public Finance Administration during **2003 – 2005**;
 - copies of the **annual** declarations on profit tax (101 form) consigned at the Public Finance Administration during **2003 – 2005**;

- copies of other justified documents, including rectified fiscal declarations (if it is the case).

▪ **SC MOBFOREST SRL – the Competition Council address no. DRMACAS/686/12.07.2006:**

- the state aid value, consist of exemption from the payment of profit tax, of which benefited **on each quarter** during **2003 – 2005**;
- copies of the balance sheet for **2003 - 2005**;
- copies of the declarations on profit tax (100 form) **quarterly** consigned at the Public Finance Administration during **2003 – 2005**;
- copies of the **annual** declarations on profit tax (101 form) consigned at the Public Finance Administration during **2003 – 2005**;
- copies of other justified documents, including rectified fiscal declarations (if it is the case).

(9) Three undertakings from Valea Jiului deprived area sent apart of the solicited documents, thus: SC GEMARK RECORDS SRL – by address registered at the Competition Council as DRMCAS 708/25.07.2006, SC LAS PAN SRL - by address registered at the Competition Council as RG 5641/24.07.2006, SC VISA SA - by address registered at the Competition Council as DRMCAS 694/18.07.2006.

(10) SC EURO MARCA COMPANY SRL from Ip deprived area sent all the solicited copies of the documents by address registered at the Competition Council as RG 5610/21.07.2006.

(11) It has to be mentioned that SC MOBFOREST SRL and SC ITALSTEI SRL did not answer to the Competition Council solicitation in the limit term established by the information request.

(12) Taking into account that the information and documents received were not complete in order to assess exactly the date in which it was registered the exceeding of the state aid intensity, the Competition Council came back on the information requests, asking to complete those until 21.08.2006, as it follows:

▪ **SC ITALSTEI SRL – the Competition Council address no. DRMACAS/739/16.08.2006:**

- copies of the balance sheet at 30 June 2005;
- copies of the trial balances at 31 March 2005, at 30 June 2005 and 30 September 2005;

▪ **SC GEMARK RECORDS SRL – the Competition Council address no. DRMACAS/740/16.08.2006:**

- copies of the balance sheet at 30 June 2005;
- copies of the trial balances at 31 March 2005, at 30 June 2005 and 30 September 2005;

▪ **SC LAS PAN SRL – the Competition Council address no. DRMACAS/741/16.08.2006:**

- copies of the trial balances at 31 March 2005 and 30 September 2005;

- **SC VISA SA – the Competition Council address no. DRMACAS/742/16.08.2006:**
 - copies of the balance sheet at 30 June 2005;
 - copies of the trial balances at 31 March 2005, at 30 June 2005 and 30 September 2005;
- **SC MOBFOREST SRL – the Competition Council address no. DRMACAS/686/12.07.2006:**
 - the state aid value, consist of exemption from the payment of profit tax, of which benefited **on each quarter** during **2003 – 2005**;
 - copies of the balance sheet for **2003 - 2005**;
 - copies of the declarations on profit tax (100 form) **quarterly** consigned at the Public Finance Administration during **2003 – 2005**;
 - copies of the declarations on profit tax (100 form) **quarterly** consigned at the Public Finance Administration during **2003 – 2005**;
 - copies of the **annual** declarations on profit tax (101 form) consigned at the Public Finance Administration during **2003 – 2005**;
 - copies of other justified documents, including rectified fiscal declarations (if it is the case).

(13) As a consequence of the come-back addresses of the Competition Council, SC GEMARK RECORDS SRL, SC ITALSTEI SRL, SC LAS PAN SRL and SC VISA SA sent copies of the solicited documents.

(14) The Competition Council asked also to the General Directorate of Public Finance of Hunedoara, Salaj, Bihor and Suceava Counties to sent until **28.07.2006** some additional information regarding the investigated undertakings, as it follows:

- **DGFP BIHOR - the Competition Council address no. DRMACAS/696/20.07.2006:**
 - chargeable profit of SC ITALSTEI SRL in 2003, 2004 and 2005;
 - profit tax for 2003, 2004 and 2005;
 - the exemption from the payment of profit tax of which SC ITALSTEI SRL benefited in 2003, 2004 and 2005 (the exemption it will be detailed quarterly for 2005).
- **DGFP HUNEDOARA - the Competition Council address no. DRMACAS/697/20.07.2006:**
 - chargeable profit of SC GEMARK RECORDS SRL, SC LAS PAN SRL, respectively SC VISA SA in 2003, 2004 and 2005;
 - profit tax for 2003, 2004 and 2005;
 - the exemption from the payment of profit tax of which SC GEMARK RECORDS SRL, SC LAS PAN SRL, respectively SC VISA SA benefited in 2003, 2004 and 2005 (the exemption it will detailed quarterly for 2005).
- **DGFP SALAJ - the Competition Council address no. DRMACAS/698/20.07.2006:**
 - chargeable profit of SC EURO MARCA COMPANY SRL in 2003, 2004 and 2005;
 - profit tax for 2003, 2004 and 2005;

- the exemption from the payment of profit tax of which SC EURO MARCA COMPANY SRL benefited in 2003, 2004 and 2005 (the exemption it will be detailed quarterly for 2005).

▪ **DGFP SUCEAVA - the Competition Council address no. DRMACAS/69920.07.2006:**

- chargeable profit of SC MOBFOREST SRL in 2003, 2004 and 2005;
- profit tax for 2003, 2004 and 2005;
- the exemption from the payment of profit tax of which SC MOBFOREST SRL benefited in 2003, 2004 and 2005 (the exemption it will be detailed quarterly for 2005).

(15) By addresses no. 66779/26.07.2006, registered at the Competition Council as 5853/02.08.2006 and no. 8861/27.07.2006, registered at the Competition Council as 5825/01.08.2006, the General Directorate of Public Finance Bihor, respectively the General directorate of Public Finance Salaj partially answered at the Competition Council requests.

(16) The Competition Council did not receive any answer at the information request sent to General Directorate of Public Finance Hunedoara and to General Directorate of Public Finance Suceava.

(17) Because the General Directorate of Public Finance Hunedoara and General Directorate of Public Finance Suceava did not send the request information and the information sent by General Directorate of Public Finance Bihor, respectively Salaj were incompletely related to those requested by the investigation team, the Competition Council asked MPF, by address no. CC 717/04.08.2006, information on the state aid value of which the investigated undertakings had benefited during 2003 – 2005, quarterly recouped. According to art. 32 par. 4 from the Law no. 143/1999 on state aid republished, MPF, as state aid grantor, have to keep a specific evidence of the state aid granted. MPF answer by address no. 689047/10.08.2006, registered at the Competition Council as DRMCAS 743/16.08.2006, communicating the value of state aid granted to those six undertakings, annually recouped, mentioning that the information were undertaken from the 101 Form on profit tax, consigned by the undertakings. MPF also underlined that for the investigated undertakings it was requested a fiscal inspection, so, considering these, the indubitable value of the exemption from the payment of profit tax of which the undertakings had benefited would be determined at the end of the fiscal inspection.

II. THE DESCRIPTION OF THE SCHEME

II. 1. Scheme's objective

(18) The scheme's objective is to sustain an efficient regional policy leading to economic growth by stimulating investments and commercial swaps in the deprived areas, thus favoring the enlargement, modernization and diversification of the activities undertaken by the operators in the deprived areas.

II.2. Legal basis

(19) The legal basis for granting this kind of State aid is ensured by G.E.O. no 24/1998 on deprived areas, with its subsequent amendments and completions, republished³ (named further GEO no 24/1998) and by art. 38 of Law no 571/2003 regarding the Fiscal Code⁴.

II.3. Duration of the scheme

(20) According to the provision of the Treaty on Bulgaria Republic and Romania adhesion at the European Union⁵, “[...] for the undertakings which have received the permanent investor certificate in a deprived areas before July 1st, 2003, Romania may continue to grant exemptions from the payment of the profit tax based on G.E.O. no. 24/1998, as it was amended:

- for deprived area Turda, until the end of 2006;
- for 3 deprived areas (Brad, Valea Jiului, Balan) until the end of 2008;
- for 22 deprived areas (Comanesti, Bucovina, Altan Tepe, Filipesti, Ceptura, Albeni, Schela, Motru Rovinari, Rusca Montana, Bocsă, Moldova Noua-Anina, Baraolt, Apuseni, Stei-Nucet, Borod Suncuius-Dobresti-Vadu Crisului, Popesti-Derna-Alesd, Ip, Hida-Surduc-Jibou-Balan, Sarvasag-Chiejd-Bobota, Baia Mare, Borsa Viseu, Rodna) until the end of 2009;
- for 3 deprived areas (Cugir, Zimnicea, Copsa Mica) until the end of 2010.

II. 4. Beneficiaries

(21) The undertakings, beneficiaries of supporting measures, develop activities in the entire economic sectors, except the production, processing and marketing the agriculture products from the Annex 1 of the Regulation on regional state aid, with its subsequent amendments and completions⁶, and the steel, synthetic fibers, vehicles, fishing, and coal industries.

(22) The supporting measures beneficiaries issued by G.E.O. no. 24/1998 are undertakings which received the permanent investor certificate in a deprived area before July 1st 2003, but after the proclamation of the respective area as a deprived one.

II. 5. Purpose of the scheme

(23) The purpose of the scheme is to ensure, that undertakings in deprived areas have the same opportunity to develop as other undertakings in different parts of the country, by granting fiscal facilities, without determining in this way the increase of production capacity in the fields

³ G.E.O. no 24/1998 on deprived areas, with its subsequent amendments and completions, republished in Official Journal no. 545/08.11.1999

⁴ Law no. 571/2003 on Fiscal Code, published in Official Journal no. 927/23.12.2003

⁵ Law no.157/2005 for ratifying the Treaty between Belgium Kingdom, Czech Republic, Kingdom of Denmark, Federal Republic of Germany, Republic of Estonia, Republic of Greece, Kingdom of Spain, French Republic, Ireland, Republic of Italy, Republic of Cyprus, Republic of Latvia, Republic of Lithuania, Grand Duchy of Luxembourg, Republic of Hungary, Republic of Malta, Kingdom of Netherlands, Republic of Austria, Republic of Poland, Republic of Portugal, Republic of Slovenia, Republic of Slovak, Republic of Finland, Kingdom of Sweden, United Kingdom of Great Britain and Northern Ireland (member states of European Union) and Republic of Bulgaria and Romania regarding the accession of Republic of Bulgaria and of Romania to European Union, signed by Romania at Luxembourg on 25 April 2005, published in the Official Journal no 465/01.06.2005

⁶ Regulation on regional state aid, published in Official Journal no. 340/19.04.2004

where there are some problems related to overcapacity. Thus, the scheme contributes to the development of these areas by stimulating investments and creating new jobs.

II.6. Modalities of granting the financial support

(24) According to the provisions of article 6 par. (1) let. c¹) of G.E.O. no. 24/1998, assumed by the art. 38 par. (1) from the Law no. 571/2003 on Fiscal Code, with subsequent amendments and completions, the supporting measures consists of the exemption from the payment of profit tax for the new investments, are granted, on the deprived area life-time, only to those undertakings which have obtained the permanent investor certificate in a deprived area before July 1st 2003.

III. REASONING FOR OPENING THE INVESTIGATION PROCEDURE

(25) The investigation procedure started *ex officio*, stating as its objective to analyze the compatibility of the facilities granted in deprived areas above the maximum level of intensity to those six undertakings which develop activities in the deprived areas Stei-Nucet, Valea Jiului, Ip and Bucovina in order to take the proper measures according both to the Law no 143/1999 on State aid, republished and to the G.O. no. 92/2003 on Fiscal Procedure Code, with subsequent amendments and completions.

IV. POINTS OF VIEW RECEIVED FROM BENEFICIARIES, GRANTORS OR ANY OTHER INTERESTED PERSON

(26) The Competition Council did not receive any comments from the beneficiaries, grantors or any other interested person in the legal period mentioned in the opening investigation Order (7 days from publication).

V. EVALUATION OF THE STATE AID MEASURES

(27) The analyze covers the supporting measures as exemptions of the profit tax payment from which the investigated undertakings benefited.

State aid granted by the State or from State resources

(28) The supporting measures granted are fiscal ones consist of the exemptions from the payment of the profit tax for the activities developed by the undertakings with permanent investor certificate in a deprived area, obtained before July 1st 2003. The support measures are materialized thus in the State renounces to cash in future revenues, which represents undoubtedly a financial support granted by the State, from State resources.

Selectivity

(29) The supporting measures comply obviously with the selectivity criterion because the exemption of the profit tax payment is granted only to the undertakings that obtain permanent

investor certificate in a deprived areas before July 1st 2003 and which made investments until September 15th 2004.

Economic advantage

(30) The economic advantage consists of the exempting the undertakings from the payment of some expenditure, which normally must be covered by their own resources.

The distortion of the competition or the trade between Romania and Member States

(31) In order to be considered state aid, the support measure must distort competition or the trade between Romania and Member States of the EU. As these support measures, consist of the exemptions of the profit tax payment, are granted to certain undertakings, located in deprived areas, the financial support which are the investigation subject, granted over the admissible level of the intensity threaten to distort the competition on the undertakings market.

(32) Given the above mentioned it is considered that the financial support measure granted to the undertakings which develop activities in deprived area represents State aid and falls under the provisions of Law no 143/1999 on State aid republished.

VI. ASSESSMENT OF FULFILLING THE GRANTING CONDITIONS

(33) In the Accession Treaty of the Bulgaria Republic and Romania to the European Union, Annex no VII, for deprived areas is mentioned a transitory period, as follows:

“ [...] for undertakings which were given the permanent investor certificate in a deprived area before 1st of July 2003, Romania may continue granting exemptions from the profit tax on the basis of GEO no 24/1998 on deprived areas, as amended:

- for deprived area Turda, until the end of 2006;
- for 3 deprived areas (Brad, Valea Jiului, Balan) up to and including 31 December 2008,
- for 22 deprived areas (Comanesti, Bucovina, Altan Tepe, Filipesti, Ceptura, Albeni, Schela, Motru Rovinari, Rusca Montana, Bocsă, Moldova Nouă-Anina, Baraolt, Apuseni, Stei-Nucet, Borod Suncuius-Dobresti-Vadu Crisului, Popesti- Derna-Alesd, Ip, Hida-Surduc-Jibou-Balan, Sarmaşag-Chiejd-Bobota, Baia Mare, Borsa Viseu, Rodna) up to and including 31 December 2009,
- for 3 deprived areas (Cugir, Zimnicea, Copsa Mica) up to and including 31 December 2010;

under the following **conditions**:

- the State aid is granted for regional investments;
- the gross intensity (further named intensity) of such regional aid shall not exceed the rate of 50% Net Grant Equivalent. This ceiling may be raised for small and medium-sized enterprises by 15 percentage points [...];
- the period for calculating the aid to be included under the abovementioned ceilings shall start on 2 January 2003 (assumed also in G.E.O. no. 24/1998, art. 14¹ par. 2¹) ; all aid claimed and received on the basis of profits that precede this date shall be excluded from the calculation;

- for the purpose of calculating the total aid, account shall be taken of **all aid granted to the beneficiary** in relation to eligible costs, **including aid granted under other schemes and irrespective of whether the aid is granted by local, regional, national or Community sources**;

(34) Art.14¹ par. (1) of GEO no 24/1998 stipulates:”The undertakings that carry on their activities in deprived areas benefit from the fiscal facilities mentioned in art. 6” (the exemption from the profit tax payment afferent to the new investments), “until reaching the maximum intensity of the State aid, according to the Regulation on regional state aid, approved by the Competition Council.”

(35) Taking into consideration the above mentioned, any regional aid, granted as an exemption from payment of profit tax in deprived areas which does not fulfill the conditions mentioned in the Accession Treaty of the Bulgaria Republic and Romania to the European Union and in GEO no 24/1998, can distort competition or the trade between Romania and Member States of the EU.

Eligibility of the beneficiaries

(36) According to the provisions of art. 6 of GEO no. 24/1998, “undertakings with majority private capital, Romanian legal persons, [...] which **have their headquarters and develop activities in a deprived area**, benefit for the new investments of the followings facilities:

c1) „the exemption from the payment of the profit tax afferent to the new investments, during on the deprived area life time, is applied **only to those legal persons that had obtained before 1st of July 2003 the permanent investor certificate in the deprived area.**”

(37) Art. 8 of the same normative act provides that “the foreseen facilities by the present emergency ordinance are granted to the undertakings, Romanian legal persons with majority private capital [...] which have their headquarters and develop activities in this area, **if through these new investment new jobs are created for unemployed or for the members of their families, that have their residence in the deprived area.**”

(38) According to the provisions of art. 14¹ par. 1, the exemption from the payment of the profit tax afferent to the new investment is granted only to those undertakings which made investments in deprived area until 15th September 2004.

(39) In order to benefit of exemption from the payment of the profit tax for new investments the **undertakings may not develop activities which can be framed in the vehicle, steel, synthetically fiber and coal sectors**, as they are defined in the *Multisectorial Regulation on regional state aid for large investment projects*⁷, with subsequent amendments and completions, respectively, *Regulation on state aid to the coal industry*⁸, with subsequent amendments and completions. Also, the undertakings may not develop activities included in Annex 1 at the Regulation on regional state aid (the production, the manufacturing and the marketing of the agriculture products), as well as the activity assimilated with fishery and aquaculture.

(40) From the Finding Notes elaborated by the Competition Council inspectors during the monitoring action from March – June 2006 it results that the investigated undertakings which

⁷ Multisectorial Regulation on regional state aid for large investment projects, published in Official Journal no. 165/17.03.2003

⁸ Regulation on state aid to the coal industry, published in Official Journal no. 736/16.08.2004

have their headquarter and develop activities in the deprived areas Stei – Nucet, Valea Jiului, Ip and Bucovina, had obtained the permanent investor certificate before 1st of July 2003 and made investments in deprived area until 15th September 2004.

(41) The activities develop by the undertakings in the deprived areas mentioned above are framed in the fields covered by the Competition Council Regulation on regional state aid, with subsequent amendments and completions, being thus eligible to receive state aid as exemption from the payment of the profit tax, according to the provisions of GEO no. 24/1998, assumed by art. 38 from the Law no. 571/2003 on Fiscal Code.

Aid for the initial investment

(42) According to the art. 6 of GEO no. 24/1998, the undertakings which have their headquarters and develop activities in deprived areas benefited of facilities for new created investments (initial).

(43) According to art. 5 par. 1 from the Regulation on regional state aid, “by initial investment is getting on an investment in fixed capital related with the creation of a new unit, the development of an existent one or the starting of an activity that implies a fundamental change in the product or in the production process of an existent unit, by rationalization, diversification and modernization”.

(44) The investigated undertakings benefited of state aid for initial investments.

Eligible costs

(45) The eligible costs for investments in tangible assets are the costs related to the acquisition of lands, buildings and equipments, necessary for the production process. For transport sector, except for the rolling stock, the expenditure for acquisition of transport means and material, mobile goods are not considered eligible costs.

(46) The eligible costs for investments in intangible assets are the cost related to the transfer of technology through the acquisition of patent rights, licenses, know-how or unpatented technical knowledge, with the conditions to not exceed 25% of the costs in tangible assets for large undertakings value.

(47) Assessing the Finding Notes drawn up by the competition inspectors before the investigation opening, it can be ascertained that the State aid was generally granted for the acquisition of equipments, buildings and lands. For the undertaking that operates in the transport sector (SC EURO MARCA COMPANY SRL), the expenditure for acquisition of transport means and material, mobile goods were excluded from the basis of computation.

Beneficiaries' contribution

(48) In order to guarantee a viable and efficient level of the initial investments that benefit from State aid, the beneficiaries' contribution should be at least 25%.

(49) From the information that it possesses, the Competition Council ascertains that from these 6 investigated undertakings, only 2 had contribution to the investment that get at or exceeded 25%.

Intensity

(50) The State aid intensity for the initial investment is established as a ratio between the amount of state aid and the value of eligible costs for the investment.

(51) As it is mentioned also in the Accession Treaty, Annex VII, the State aid intensity must not exceed the following limits:

- 50% for large business;
- 65% for SME (except for the transport sector);

(52) According to the provisions of art. 14¹ introduced in GEO no. 24/1998 by the Law no. 507/2004, the following elements are taken into consideration in establishing the State aid intensity:

- eligible costs for the investments realized until 15.09.2004 (but after the moment when the area was declared as deprived);
- the amount of the State aid received by the undertakings starting with 02.01.2003.

(53) According to the information received during the investigation, the value of State aid and the intensity has been established individually for all undertakings, taking into consideration the followings aspects:

1. all of them are SME and only one carries on activity in transports sector;
2. in order to calculate intensity it were taking into consideration the eligible costs afferent to the investments realized until September 15th, 2004 (but after the date when the area it was declared as deprived one), respectively the state aid as exemption from the payment of the profit tax received by the undertakings starting at January 2nd 2003 until December 31st 2005.

Investment Maintenance

(54) Following the monitoring action it was observed that all 6 undertakings maintained in the areas the investments that were taken into consideration at the state aid intensity determination. All the undertakings will be monitor in order to observe all the state aid granting conditions, including the condition to maintain the investment in the deprived area in which they develop activity for at least 5 years.

VI. METHODOLOGICAL ASPECTS

(55) **The gross intensity of the state aid** represents the value of the state aid, quantified before applying direct taxes, expressed as a percent from the eligible costs of the investment.

The net intensity of the state aid represents the value of the state aid, quantified after applying direct taxes, expressed as a percent from the eligible costs of the investment⁹.

Taking into consideration that on the state aid, as exemptions from the payment of profit tax, were not applied direct taxes; the value of the gross intensity is the same with the value of the net intensity of the state aid.

The Competition Council takes into consideration in it's analyze the value of the gross intensity of the state aid, expressed as a percent from the eligible costs of the investment, and it uses the term of the state aid intensity.

According to the provisions of art. 9 and 10 of the Regulation on regional state aid, with subsequent completions and amendments, the maximum admissible level of the gross intensity is 50% from the eligible costs (65% in the SME's case, except transports).

(56) In order to determine the moment of exceeding the admissible intensity it were taken into consideration the followings aspects:

1. obligativity to calculate and to report quarterly the profit tax owed for the activities carry on in the deprived areas, until the 25th of the month following the ending of the reported quarter;
2. value of exemptions from the payment of profit tax for each quarter;
3. maximum value of state aid of which an undertaking can benefited, reported at the eligible costs of the investment;
4. obligativity to maintain the investment.

(57) In order to determine the interest level afferent to the illegal state aid were used the *Guidelines on interests level in the case of recovery or reimbursement of an illegal or forbidden state aid*, applied through the President Competition Council Order no. 51/21.03.2005, published in Official Journal no 253/25.03.2005.

(58) 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 it will be applied until the recovery moment of the state aid, being applied the capitalization principle.

(59) The interest level used in the case of recovery the illegal state aid is the same as the level of 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 it is used the reference interest of the National Bank of Romania for the first working day from July.

⁹ Regulation on state aid for SME's, published in Official Journal no 340/19.04.2004, with subsequent amendments and completions

(60) 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.

(61) The interest quantum was determined for each undertaking by totalizing the absolute values of the interests, which resulted due to the applying of the reference interests on the value of exemptions from the payment of profit tax quarterly reported.

(62) The interest, afferent to the illegal state aid of which benefited the undertakings, was calculated for a period between the moment when the illegal state aid was put at the beneficiary disposal and 30th September 2006.

(63) Beginning with 1st October 2006 until the moment of effective recovery, the interest amount shall be calculated by the MPF – National Agency for Fiscal Administration, as the institution responsible for the recovery of unlawful aid, in conformity with the provisions of art.194² (2) from G.O. no.92/2003 on Fiscal Procedure Code¹⁰, republished. Until the moment of the government ordinance issuing that will establish the annual level of the interest afferent to the recovery amount as illegal or forbidden state aid (art.194² (4) from G.O. no.92/2003 on Fiscal procedure code, as it was modified by G.E.O. no. 129/2005), the interest level will be established according to *Guidelines on interests level in the case of recovery or reimbursement of an illegal or forbidden state aid*, issued by the Competition Council.

VIII. THE ANALYSIS OF THE UNDERTAKINGS STATUS

SC ITALSTEI SRL

(64) **SC ITALSTEI SRL**, Stei, 7 M. Pompiliu Street, Stei-Nucet deprived area, Bihor County, J05/488/1999, unique registration code 11948774. The undertaking is a S.M.E. and has the investor certificate no. 147/04.02.2000 in deprived area Stei-Nucet and it develops the activity of „Manufacturing of textile articles (except closing and underwear)” – NACE code 1740.

According to the Finding Note no BH no. 328/02.06.2006, drawn-up by the competition inspectors on the basis of the accounting submitted by the undertaking and signed by the enterprise representative, the situation of the State aid received and of the eligible realized investment stands like this:

- the State aid i.e. tax exemption during 02.01.2003 – 31.12.2005: **RON 62,295.5**;
- the amount of investments: **RON 83,803.6** as production equipments and transport devices used in the production process.

Taking into consideration that the undertaking's control action, materialized in the above-mentioned finding note, took place prior to the investigation opening, was exclusively based on the accounting submitted by the undertaking, the investigation team solicited to the state aid

¹⁰ G.O. no. 92/2003 on Fiscal Procedure Code, republished in Official Journal no. 863/26.09.2005

supplier (MPF) to communicate the state aid value of which the undertaking benefited during 2003 – 2005.

According to the addresses no. 66779/26.07.2006, registered at the Competition Council with RG no 5853/02.08.2006, and no. 689047/10.08.2006, registered at the Competition Council with DRMCAS no. 743/16.08.2006 sent by the General Directorate of Public Finance Bihor, respectively by MPF, during 02.01.2003 – 31.12.2005 the undertaking benefited of state aid, thus:

- 2004: RON 53,650;
- 2005: RON 7,022

Total value: RON 60,672

Thus, the value that was took into consideration to determine the state aid intensity was the one communicated by MPF, respectively **RON 60,672**.

Taking into account the new investment and the value of the State aid transmitted by the GDPF and MPF, the intensity of State aid received by SC ITALSTEI SRL is **72.4%**, exceeding the maximum admissible level of 65%.

In accordance with the legal provisions in force, taking into account the value of the eligible investment carried out by SC ITALSTEI SRL, this undertaking had the right to benefit of State aid in quantum of RON 54,472.34. The difference of **RON 6,199.66** represents State aid received by SC ITALSTEI SRL without observance the rules on maximum admissible level of intensity and on realizing investments.

The illegal state aid was put at S.C. ITALSTEI S.R.L. disposal (the data when the exceeding of the state aid intensity was registered) in:

- **October 26th 2005** for the value of RON 3,108.70 as exemption from the payment of the profit tax afferent to the 3rd quarter of 2005;
- **January 26th 2005** for the value of RON 3,091.04 as exemption from the payment of the profit tax afferent to the 4th quarter of 2005

SC GEMARK RECORDS SRL

(65) **SC GEMARK RECORDS SRL**, Petrosani, 97/3 1st December, Valea Jiului deprived area, Hunedoara County, J20/2398/1992, unique registration code 2672750. The undertaking is a S.M.E. and has the investor certificate no. 575/09.03.2001 and it develops the activity of „Retail, unspecialized, with food, drinking and tobacco” –NACE code 5139.

According to the Finding Note no HD no. 279/09.05.2006, drawn-up by the competition inspectors on the basis of the accounting submitted by the undertaking and signed with objections by the enterprise representative, the situation of the State aid received and of the eligible realized investment stands like this:

- the State aid i.e. tax exemption during 02.01.2003 – 31.12.2005: **RON 48,039**;
- the amount of investments: **RON 2,532.5** as production equipments.

According to the address no. 689047/10.08.2006, registered at the Competition Council with DRMCAS no. 743/16.08.2006 sent by MPF, the undertaking benefited in 2005 by **RON 48,039** state aid.

Thus, the value that was taken into consideration to determine the state aid intensity was the one communicated by MPF, respectively **RON 48,039**.

Taking into account the new investment and the value of the State aid transmitted by MPF (value that confirmed the state aid value registered in the Finding note drawn up by the Competition Council inspectors), the intensity of State aid received by SC GEMARK RECORDS SRL is **1,896.90%**, exceeding the maximum admissible level of 65%.

In accordance with the legal provisions in force, taking into account the value of the eligible investment carried out by SC GEMARK RECORDS SRL, this undertaking had the right to benefit of State aid in quantum of RON 1,646.13. The difference of **RON 46,392.87** represents State aid received by SC GEMARK RECORDS SRL without observance the rules on maximum admissible level of intensity and on realizing investments.

The illegal state aid was put at S.C. GEMARK RECORDS S.R.L. disposal (the data when the exceeding of the state aid intensity was registered) in **January 26th 2005**.

SC LAS PAN SRL

(66) **SC LAS PAN SRL**, Petrosani, 6A Livezeni street, Valea Jiului deprived area, Hunedoara County, J20/136/2000, unique registration code 13153197. The undertaking is a S.M.E. and has the investor certificate no. 427/25.03.2000 and it develops the activity of „Retail with dry goods, glass and paint” –NACE code 5246.

According to the Finding Note no HD no. 236/04.04.2006, drawn-up by the competition inspectors on the basis of the accounting submitted by the undertaking and signed by the enterprise representative, the situation of the State aid received and of the eligible realized investment stands like this:

- the State aid i.e. tax exemption during 02.01.2003 – 31.12.2005: **RON 78,448**;
- the amount of investments: **RON 107,936** as buildings, production equipments and transport devices used in the production process.

Taking into consideration that the undertaking's control action, materialized in the above-mentioned finding note, took place prior to the investigation opening, was exclusively based on the accounting submitted by the undertaking, the investigation team solicited to the state aid supplier (MPF) to communicate the state aid value of which the undertaking benefited during 2003 – 2005.

According to the address no. 689047/10.08.2006, registered at the Competition Council with DRMCAS no. 743/16.08.2006 sent by MPF, during 02.01.2003 – 31.12.2005 the undertaking benefited of state aid, thus:

- 2003: **RON 25,794**;
- 2004: **RON 20,627**;
- 2005: **RON 23,739**.

Total value: RON 70,160

Thus, the value that was taken into consideration to determine the state aid intensity was the one communicated by MPF, respectively **RON 70,160**.

Taking into account the new investment and the value of the State aid transmitted by MPF, the intensity of State aid received by SC LAS PAN SRL is **65%**, thus reaching the maximum admissible level of 65%.

The moment when the state aid granted to S.C. LAS PAN S.R.L. reached the maximum admissible level of the state aid intensity is **January 26th 2005**.

SC VISA SA

(67) **SC VISA SA**, Petrosani, 4/2 Closca Street, Valea Jiului deprived area, Hunedoara County, J20/1105/1994, unique registration code 6146812. The undertaking is a S.M.E. and has the investor certificate no. 12/06.08.1999 and it develops the activity of „Business and management consultancy” –NACE code 7414.

According to the Finding Note no HD no. 190/22.03.2006, drawn-up by the competition inspectors on the basis of the accounting submitted by the undertaking and signed by the enterprise representative, the situation of the State aid received and of the eligible realized investment stands like this:

- the State aid i.e. tax exemption during 02.01.2003 – 31.12.2005: **RON 105,388**;
- the amount of investments: **RON 119,398** as lands, buildings, production equipments and transport devices used in the production process.

Taking into consideration that the undertaking's control action, materialized in the above-mentioned finding note, took place prior to the investigation opening, was exclusively based on the accounting submitted by the undertaking, the investigation team solicited to the state aid supplier (MPF) to communicate the state aid value of which the undertaking benefited during 2003 – 2005.

According to the address no. 689047/10.08.2006, registered at the Competition Council with DRMCAS no. 743/16.08.2006 sent by MPF, during 02.01.2003 – 31.12.2005 the undertaking benefited of state aid, thus:

- 2003: **RON 34,961**;
- 2004: **RON 1,728**;
- 2005: **RON 52,364**.

Total value: RON 89,053

Thus, the value that was taken into consideration to determine the state aid intensity was the one communicated by MPF, respectively **RON 89,053**.

Taking into account the new investment and the value of the State aid transmitted by MPF, the intensity of State aid received by SC VISA S.A. is **74.6%**, exceeding the maximum admissible level of 65%.

In accordance with the legal provisions in force, taking into account the value of the eligible investment carried out by SC VISA S.A., this undertaking had the right to benefit of State aid in quantum of RON 77,608.70. The difference of **RON 11,444.30** represents State aid received by SC VISA S.A. without observance the rules on maximum admissible level of intensity and on realizing investments.

The illegal state aid was put at S.C. VISA S.A. disposal (the data when the exceeding of the state aid intensity was registered) in **January 26th 2005**.

SC EURO MARCA COMPANY SRL

(68) **SC EURO MARCA COMPANY SRL**, Ip, 265/F Principala Street, Ip deprived area, Salaj County, J31/1/2000, unique registration code 12601608. The undertaking is a S.M.E. and has the investor certificate no. 502/14.08.2000 and it develops the activity of „Freight transport by road” –NACE code 6024.

According to the Finding Note no SJ no. 37/10.04.2006, drawn-up by the competition inspectors on the basis of the accounting submitted by the undertaking and signed by the enterprise representative, the situation of the State aid received and of the eligible realized investment stands like this:

- the State aid i.e. tax exemption during 02.01.2003 – 31.12.2005: **RON [...]**;
- the amount of investments: **RON [...]** as buildings and production equipments.

According to the addresses no. 8861/27.07.2006, registered at the Competition Council with RG no. 5825/01.08.2006 and no. 689047/10.08.2006, registered at the Competition Council with DRMCAS no. 743/16.08.2006 sent by General Directorate of Public Finance Salaj and by MPF, the undertaking benefited during 2003 – 2005 of state aid, thus:

- 2003: **RON [...]**;
- 2004: **RON [...]**;
- 2005: **RON [...]**.

Thus, the value that was took into consideration to determine the state aid intensity was the one communicated by MPF, respectively **RON [...]**.

Taking into account the new investment and the value of the State aid transmitted by GDPF Salaj and by MPF (value that confirmed the state aid value registered in the Finding note drawn up by the Competition Council inspectors), the intensity of State aid received by SC EURO MARCA COMPANY SRL is **61.9%**, exceeding the maximum admissible level of 50% (taking into consideration that the undertaking develops transport activity – NACE code 6024).

In accordance with the legal provisions in force, taking into account the value of the eligible investment carried out by SC EURO MARCA COMPANY SRL, this undertaking had the right to benefit of State aid in quantum of RON [...]. The difference of **RON [...]** represents State aid received by SC EURO MARCA COMPANY SRL without observance the rules on maximum admissible level of intensity and on realizing investments.

The illegal state aid was put at S.C. EURO MARCA COMPANY S.R.L. disposal (the data when the exceeding of the state aid intensity was registered) in **January 26th 2005**.

SC MOBFOREST SRL

(69) **SC MOBFOREST SRL**, Poiana Stampei, 8 Casoi village, Bucovina deprived area, Suceava County, J33/313/1999, unique registration code 11963596. The undertaking is a S.M.E. and has the investor certificate no. 53/20.12.1999 and it develops the activity of „Sawmilling and planning of wood, impregnation of wood” – NACE code 2010.

According to the Finding Note from 21.03.2006, drawn-up by the competition inspectors on the basis of the accounting submitted by the undertaking and signed by the enterprise representative, the situation of the State aid received and of the eligible realized investment stands like this:

- the State aid i.e. tax exemption during 02.01.2003 – 31.12.2005: **RON 76,534**;
- the amount of investments: **RON 71,293** as buildings and transport devices used in the production process.

Taking into consideration that the undertaking's control action, materialized in the above-mentioned finding note, took place prior to the investigation opening, was exclusively based on the accounting submitted by the undertaking, the investigation team solicited to the state aid supplier (MPF) to communicate the state aid value of which the undertaking benefited during 2003 – 2005.

According to the address no. 689047/10.08.2006, registered at the Competition Council with DRMCAS no. 743/16.08.2006 sent by MPF, the undertaking benefited of **RON 29** state aid (in 2003).

Thus, the value that was taken into consideration to determine the state aid intensity was the one communicated by MPF, respectively **RON 29**.

Taking into account the new investment and the value of the State aid transmitted by MPF, the intensity of State aid received by SC MOBFOREST S.R.L. is **0,04%**, thus framed in the maximum admissible level of 65%.

In accordance with the legal provisions in force, taking into account the value of the eligible investment carried out by SC MOBFOREST S.R.L., this undertaking had the right to benefit of State aid in quantum of RON 46,340.45. Taking into consideration that the undertaking had benefited until 31.12.2005 of RON 29 state aid, it results that it did not exceed the maximum admissible level of state aid intensity.

(70) Following the assessment, the Competition Council concludes that:

1. SC ITALSTEI SRL, SC GEMARK RECORDS SRL, SC VISA SA and SC EURO MARCA COMPANY SRL did not fulfill the condition regarding the maximum admissible level of state aid intensity, thus being infringed both the provisions of the Accession Treaty of the Bulgaria Republic and of Romania to the European Union, and the provisions of the GEO no. 24/1998;
2. SC LAS PAN reached the maximum admissible level of state aid intensity;
3. SC MOBFOREST SRL did not exceed the maximum admissible level of state aid intensity.

IX. CONCLUSIONS

(71) Following the investigation and taking into account that in the absence of any other applicable compatibility ground, it can be concluded that the state aid, as exemption from the payment of the profit tax afferent to the new investment, granted over the maximum admissible level of the state aid intensity are illegal.

(72) The state aids granted over the maximum admissible level of state aid intensity are incompatible both with the Accession Treaty of the Bulgaria Republic and the Romania to the European Union provisions, Annex VII, and with GEO no 24/1998 provisions.

DECIDES

Art. 1. Based on art. 27 par. (1) from the Competition Law no 21/1996, republished and on art. 194² from the G.O. no. 92/2003 on Fiscal Procedure Code, republished, the illegal and incompatible state aids as exemptions from the payment of the profit tax granted in deprived areas above the maximum admissible level of gross intensity to the following undertakings will be recovered:

- **SC ITALSTEI SRL**, Stei, 7 M. Pompiliu Street, Stei-Nucet deprived area, Bihor County, J05/488/1999, unique registration code 11948774;
- **SC GEMARK RECORDS SRL**, Petrosani, 97/3 1st December, Valea Jiului deprived area, Hunedoara County, J20/2398/1992, unique registration code 2672750;
- **SC VISA SA**, Petrosani, 4/2 Closca Street, Valea Jiului deprived area, Hunedoara County, J20/1105/1994, unique registration code 6146812;
- **SC EURO MARCA COMPANY SRL**, Ip, 265/F Principala Street, Ip deprived area, Salaj County, J31/1/2000, unique registration code 12601608;

Art. 2. The value of **RON 6,602.32**, as illegal and incompatible aid of which benefited **SC ITALSTEI SRL**, in quantum of **RON 6,199.66** and the interest afferent to the illegal state aid considered an annual interest of 8.00% for the period between October 26th 2005 and September 30th 2006, in quantum of **RON 402.66**, will be recovered according to the provisions of the art. 194² par. 3 from the G.O. no. 92/2003 on Fiscal Procedure Code, republished.

Art. 3. The value of **RON 48,756.31**, as illegal and incompatible aid of which benefited **SC GEMARK RECORDS SRL**, in quantum of **RON 46,392.87** and the interest afferent to the illegal state aid considered an annual interest of 7.50% for the period between January 26th 2006 and September 30th 2006, in quantum of **RON 2,363.44**, will be recovered according to the provisions of the art. 194² par. 3 from the G.O. no. 92/2003 on Fiscal Procedure Code, republished.

Art. 4. The value of **RON 12,027.10**, as illegal and incompatible aid of which benefited **SC VISA SA**, in quantum of **RON 11,444.30** and the interest afferent to the illegal state aid considered an annual interest of 7.50% for the period between January 26th 2006 and September

30th 2006, in quantum of **RON 582.80**, will be recovered according to the provisions of the art. 194² par. 3 from the G.O. no. 92/2003 on Fiscal Procedure Code, republished.

Art. 5. The value of **RON [...]**, as illegal and incompatible aid of which benefited **SC EURO MARCA COMPANY SRL**, in quantum of **RON [...]** and the interest afferent to the illegal state aid considered an annual interest of 7.50% for the period between January 26th 2006 and September 30th 2006, in quantum of **RON [...]**, will be recovered according to the provisions of the art. 194² par. 3 from the G.O. no. 92/2003 on Fiscal Procedure Code, republished.

Art. 6. On the basis of art. 194² par. 2 of the Fiscal Procedure Code, as it was amended by GEO 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 the undertakings mentioned above, 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. 7. Starting with October 1st 2006 until the effective recovery moment, the interest quantum will be calculated by MPF – National Agency for Fiscal Administration, as the responsible authority for the recovery of the illegal state aid, according to 194² par. (2) from the G.O. no. 92/2003 on Fiscal Procedure Code, republished. Until the moment of the government decision issuing which will establish the annual level of the interest afferent to the values to be recovered as illegal or forbidden state aid (art. 194² par. 4 of the Fiscal Procedure Code, as it was amended by GEO 129/2005), the interest quantum will be established according to the Guidelines on the interest rate applied in case of recovery or reimbursement of the illegal and prohibited aid, issued by the Competition Council.

Art. 8. It will be stopped the state aid granting as exemption from the payment of the profit tax for the investment realized by **SC LAS PAN SRL**, Petrosani, 6A Livezeni street, Valea Jiului deprived area, Hunedoara County, J20/136/2000, unique registration code 13153197.

Art. 9. The potential state aids granted as exemption from the payment of the profit tax to the undertakings **SC ITALSTEI SRL**, **SC GEMARK RECORIS SRL**, **SC VISA SA**, **SC EURO MARCA COMPANY SRL**, **SC LAS PAN SRL**, after the moment of the exceeding registered, respectively the reaching of the maximum admissible level of the state aid intensity (art. 64, 65, 67, 68, respectively 66 from the present decision), will be recovered by MPF - National Agency for Fiscal Administration.

Art. 10. The activity of **SC MOBFOREST SRL**, Poiana Stampei, 8 Casoi village, Bucovina deprived area, Suceava County, J33/313/1999, unique registration code 11963596, will be still monitored by the Competition Council, in order to observe the legal regulations on maximum admissible level of the regional state aid intensity.

Art. 11. The present Decision constitutes writ of execution according to the provisions of art. 194² par. 1 from the G.O. no. 92/2003 on Fiscal Procedure Code, republished.

Art. 12. The Ministry of Public Finance will inform the Competition Council in 3 months on the actions taken for the implementation of the measures disposed by the present Decision.

Art. 13. According to the provisions of art. 46 of Law no.143/1999 on 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. 14. The present Decision becomes applicable at the date of its communication.

Art. 15. 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;
- **SC ITALSTEI SRL**, Stei, 7 M. Pompiliu Street, Bihor County.
- **SC GEMARK RECORDS SRL**, Petrosani, 97/3 1st December, Hunedoara County.
- **SC LAS PAN SRL**, Petrosani, 6A Livezeni Street, Hunedoara County.
- **SC VISA SA**, Petrosani, 4/2 Closca Street, Hunedoara County.
- **SC EURO MARCA COMPANY SRL**, Ip, 265/F Principala Street, Salaj County.
- **SC MOBFOREST SRL**, Poiana Stampei, 8 Casoi village, Suceava County.

Art. 16. The General Secretariat, the Reporting, Monitoring and Controlling State Aids Department and the Legal Department of the Competition Council will follow the enforcement of this Decision.

PRESIDENT

MIHAI BERINDE