

DECISION OF THE COMPETITION COUNCIL
no. 55 as of 13.03.2006

ON THE STATE AID TO BE GRANTED TO
SC GRAELLS& LLOCH INVEST SRL

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, the content and other details of a state aid 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 size enterprises, published in the Official Gazette, Part I no. 340 of 19.04.2004;

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. 1579/MNT/13.02.2006, registered at the Competition Council with no. RS-AS 34/15.02.2006, 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 GRAELLS & LLONCH INVEST SRL as part of the state aid scheme within 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) The notification became effective on 02.03.2006.

2. OBJECTIVE OF THE FINANCIAL SUPPORT

(3) The purpose of setting up Prejmer - Brasov Industrial Park is to stimulate local and economic development of the region by establishing the business infrastructure, creating new investments to attract the undertakings and investors which would manufacture/provide goods and services with a high added value. The establishment and development of an industrial park is recognized as mechanisms of economic growth by the investments it attracts and by the increase in the number of jobs¹, ensuring the quick access, and at reduced costs, to the technical infrastructure. These stimulate the region's competitive capacities, making possible the capitalization of the region's own development potential. The support from the State is necessary and vital taking into account that it must use the high qualified working force within the area, as well as the need to create the conditions to absorb the surplus of population originally from the deprived rural areas nearby.

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

- Creating attractive conditions (infrastructure, utilities and adequate connexion services) in order to efficiently carry out its economic activity;
- Stimulating the partnerships between the private, research, public administration and university sectors;
- Increasing the attractiveness of the industrial park, by ensuring the accessibility and transparency for all the undertakings;
- Attracting the firms capable to carry out productive activities with high added value;
- Capitalizing the local qualified working force, by developing the economic activities which can mainly determine the employment of the high qualified personnel existing within the area.

3. DESCRIPTION OF THE STATE AID MEASURES

3.1. The legal basis for granting the aid

¹ After the complete accomplishment of the investments (approx. 6 years) the total number of direct jobs will be of 5,864, and the total number (together with those indirectly created and related to the services performed within the park) will be of 10,000 jobs;

- GO no. 65/2001 on the establishment and functioning of industrial parks, approved by Law no. 490/2002;
- 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 Internal Affairs on the granting of the industrial park status to the “Association Prejmer Industrial Park”.

3.2. Masurile de sprijin financiar pentru SC GRAELLS& LLONCH INVEST SRL

(5) The financial measures i.e. RON 3,463,315, notified by the Ministry of Administration and Internal Affairs are to be granted to SC Graells& Llonch Invest SRL in view of providing with the infrastructure required for the appropriate functioning of the industrial park. To this end, SC Graells& Llonch Invest SRL 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 965,430;
- deduction from the tax on land, amounting RON 168,554;
- deduction from the tax for taking off the land from the agricultural register/modifying the land's purpose, amounting RON 1,437,600;
- 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 891,731.

(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 Graells& Llonch Invest SRL until 31.12.2006 amounts RON 27,866,604. Based on this it was calculated the deduction, as follows: $27,866,604 \times 20\% \times 16\%^2 = 891,731$ 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.

(7) The exemption from the payment of the tax on land and buildings within the industrial park are granted during 2006-2010 in annual tranches and has a total discounted value of RON 1,133,984. In accordance with the information submitted

² Unde 16% este cota unicade impozitare a profitului

by the state aid grantor, the state aid's amount was calculated by the audit firm contracted by Graells.

(8) When discounting the state aid amounts, the audit firm used the inflation rate in stead of the reference rate due to the fact that in the last years the reference rate registered very high fluctuations (from 34.6% in February 2002 to 7.5% in February 2006) and it is difficult to estimate its future evolution. As far as the inflation rate is concerned, it also vary during 2002- 2005 (from 14.5% to 8.6%) but it had a more liniar trend, so that its evolution can be predicted astfel. Therefore, the audit firm forecasted the following values of the inflation rate for the period 2006- 2010:

Table no. 1 The forecast of the evolution of the inflation rate during 2006 - 2010

| 2006 | 2007 | 2008 | 2009 | 2010 |
|------|------|------|------|------|
| 8% | 6.5% | 5.5% | 4.5% | 3.5% |

Source: Supplementary information to the notification

By applying this calculation algoritm the following state aid amounts were established for the exemption from the payment of the tax on buildings and land:

Table no.2 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 | 39.754 | 36.402 | 30.886 | 30.227 | 31.285 | 168.554 |
| The discounted tax value on buildings | 31.538 | 123.232 | 259.281 | 270.948 | 280.431 | 965.430 |

Source: Supplementary Informations to the notification

9) Taking into accoun that BNR predicted a 5% inflation rate for 2005 (smaller than the real inflation rate registered in 2005) and taking into accoun the opinions of the specialists³ in the field, who consider as un- realistic the inflation established by BNR as target for 2006⁴, the Competition Council concluded that the evolution of the inflation rate during 2006- 2010, as estimated by the audit firm, is credible.

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

(10) In order to establish an industrial park within the village comuna Prejmer, Brasov County, it was established the „Association Prejmer Industrial Park” with the following members: SC

³ Analistii economici de la BAC Investment Bank si ING, in ziarul Saptamana Financiara din data de 27.02.2006

⁴ Acestia se asteapta la o rata a inflatiei de 7% - 8% in 2006

Graells & Lloch Invest SRL (85% of the equity), Brasov County Council (5% of the equity), Brasov Local Council (5% of the equity), Prejmer Local Council (3% of the equity), SC Aqua Service SRL and SC Impuls Strategic Consulting SRL (with 2% of the equity). Prejmer Industrial Park is administrated by SC Graells & Llonch Administrare Parc Industrial SA, based on an administration contract closed with the members of the association.

The beneficiary of the financial measures granted by the State is SC Graells& Llonch Invest SRL, member of the association. The company is registered at the Trade Register with no. J-08/556/2005, CUI R 15834330, has an equity of RON 70,000 and the office headquarters in the village Prejmer, Strada Mare nr.500, Brasov County.

(11) At the end of 2005, SC Graells & Lloch Invest SRL had 3 employees and an estimated turnover of RON 322,852.

(12) According to the information from the Ministry of Administration and Internal Affairs in the notification, SC Graells& Llonch Invest SRL has as sole associate Graells & Llonch, SL, Spain, which has a turnover of approx. Euro 3 mil. and 120 employees. In consequence, we can conclude that SC Graells& Llonch Invest SRL is an SME, fulfilling therefore, the conditions on the number of employees and the turnover as provisioned in the *Regulation on the state aid for SMEs*.

(13) The core business of SC Graells& Llonch Invest SRL is represented by „real estate activities with own goods” (CAEN code 7011).

(14) The Prejmer Industrial Park is located in Brasov County, Prejmer village. The land designated for the park has 50.38 ha extra-village land and is situated at 15 km of Brasov, nearby the national road no. 10 Brasov- Prejmer.

(15) This industrial park has as specialisation area the processing industry, mainly the processing and/or re-establishing the use value of certain goods, with the possibility of focusing on top industries.

(16) The Prejmer Industrial Park is located in the Centre Development Region. The Ministry of Administration and Internal Affairs stated that in this region there are three other industrial parks, namely Carfil Industrial Park, Metrom Industrial Park and Euroland Vladeni Industrial Park.

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

(17) The financial support measures to be granted to SC Graells& Llonch Invest SRL 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.

(18) 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 Graells& Llonch Invest SRL. Neither is there any doubt that these measures are also to affect trade with the Member States of the European Union.

(19) 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 CRAIOVA SA

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

(21) 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

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

(23) 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.

(24) In the analyzed case, the state aid intended to be granted is designed to complete the infrastructure works in Prejmer 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 85,649,938 divided as follows:

Table no. 2

Estimated cost

- RON -

| No. crt. | Item description | Amount (VAT excluded) |
|-----------------|--|------------------------------|
| | ELIGIBLE COSTS | |
| 1 | Costs for environmental protection, total | 1,265,418 |
| | From which: | |
| | - building up biological cleaning station | 298,531 |
| | - technological installations and equipments (biological cleaning station +pumps) | 966,887 |

| | | |
|---|---|---|
| 2 | Costs for accomplishing the buildings, total From which: - buildings and installations related to the buildings - technological installations and equipments - endowments installations and equipments | 74,031,926 61,391,384 9,239,838 3,400,704 |
| A | TOTAL ELIGIBLE COSTS | 75,297,344 |
| | NEELIGIBLE COSTS | |
| 3 | Costs with the designing and technical assistance, | 10,352,594 |
| B | TOTAL NEELIGIBLE COSTS | 10,352,594 |
| | TOTAL GENERAL (A+B) | 85,649,938 |

Source: MAI notification

(25) The state aid is designed for new investments (business centre, commercial centre, security points and the related infrastructure) which meet the characteristics provided by art. 5 of the Regulation on regional aid in order to be considered aid for initial investment.

(26) 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.

(27) From the estimated data presented above it results that during 2006- 2010 the total costs related to the industrial park amount RON 216,672,064, with a total turnover of RON 253,046,440, therefore, resulting a total profit of RON 36,374,375. The average economic rentability rate of the investment Project for Prejmer Industrial Park, during the above-mentioned period, is of 14.37%. From the assessment of these indicators it can be observed the economic-financial development of the Prejmer Industrial Park, and therefore, of the area it is located in.

(28) 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 Prejmer village, 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

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

(30) 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.

(31) As presented in paragraph 23, table no. 2, out of the total value of the investment project the following costs are considered eligible: costs for environmental protection and costs related to buildings and installations afferent to the basic investment.

(32) In the case of the infrastructure project in the Prejmer Industrial Park, the total value of eligible costs is RON 75,297,344 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

(33) 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).

(34) According to information provided by MAI the beneficiary of the state aid will contribute to the initial investment with RON 71,834,029 RON, representing 95.4 % from the total eligible costs (RON 75,297,344). 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

(35) According to art. 10 of the Regulation, the gross intensity of the regional aid must not be higher than 65% of the net grant equivalent.

(36) The value of the notified state aid is RON 3,463,315 and the eligible costs of the project are RON 75,297,344. The calculation shows an intensity of 4.6%, observing the criteria of art. 10 of the Regulation providing that the gross intensity of the regional aid can not be higher than 65% for SME's.

6.5. Maintenance of the investment

(37) 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.

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.

(38) The Ministry of the Administration and Internal Affairs 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 5 years, the park's life time being of approx. 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

(39) According to art. 16 of the Regulation, the 65% threshold for the state aid's gross intensity applies to the whole state aid amount, if the beneficiary receives state aids, at the same time, from several regional schemes, regardless the funds come from local, regional, national or communitarian sources.

(40) The Ministry of the Administration and Internal Affairs shall monitor SC GRAELLS& LLONCH INVEST SRL's activity, taking care that the granted state aids, cumulated with the state aids granted for the same objective within other schemes, will not exceed the 65% maximum admitted intensity provisioned by the Regulation on regional state aid, as later amended and supplemented.

7. CONCLUSIONS

(41) The information presented in the notification submitted to the Competition Council leads to the conclusion that the state aid intended to be granted to SC GRAELLS& LLONCH INVEST SRL to complete infrastructure works in Prejmer 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.

(42) Subsequent to the performed analysis it has been noted that the state aid in total amount of RON 3,463,315, consisting in the co-financing of infrastructure works in the Prejmer 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 Internal Affairs, having as beneficiary SC GRAELLS& LLONCH INVEST SRL, 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 GRAELLS& LLONCH INVEST SRL 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 Internal Affairs will follow that the aid granted to SC GRAELLS& LLONCH INVEST SRL does not exceed 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 GRAELLS& LLONCH INVEST SRL can benefit to finalize the infrastructure works in Prejmer Industrial Park is of RON 3,463,315.

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 GRAELLS& LLONCH INVEST SRL, Prejmer village, Strada Mare nr. 500, Brasov County.

PRESIDENT

MIHAI BERINDE