

DECISION No. 56
Of 13.03.2006
on the State aid granted
to SC MITTAL STEEL S.A. Galati

THE COMPETITION COUNCIL,

Having in regard the provisions of the Europe 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 in Official Gazette, Part I, no. 73 of 12.04.1993,

Having regarded the provisions of Protocol 2 on ECSC products, annex to the Europe Agreement establishing an association between Romania, on one hand, and the European Communities and their Member States, on the other hand

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

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

Having regard to the Decree no. 57/2004 for the appointment of the Competition Council's members,

Based on the following:

I. PROCEDURE

(1) On 17.02.2005 the Romanian press released some articles claiming that SC Mittal Steel SA Galati is benefiting from payment incentives related to some contributions due to the state budget.

(2) Within the technical consultations held on February 2005, experts of the European Commission have noticed that the amount of ROL 243,419 million (RON 24,341 thousands) granted on the basis of E.G.O. no. 40/2002¹ was not

¹ E.G.O. no. 40/2002 for the recovery of budgetary arrears, published in the Official Gazette no. 233 from 08.04.2002;

included in the State aid ceiling provided by the National Restructuring Strategy of the Steel Industry. As a consequence, it can not be considered compatible and it goes beyond the maximum approved amount, according to Protocol 2.

(3) By letter no. CC/252/02.03.2005, the Competition Council requested from the the Ministry of Public Finance (MPF) data relating to past due budgetary obligations of SC Mittal Steel SA Galati; The MFP has sent information by letter no. 281.556/04.03.2005, registered at the Competition Council with no. RG/1552/09.03.2005.

(4) The information submitted by the Ministry of Public Finance were not sufficient in order to reach to a conclusion. By Order of the President of the Competition Council no. 96/26.05.2005, modified by Order no.127/14.06.2005, the investigation procedure was opened. The object of this investigation is to analyze the compliance with the maximum threshold of the state aid approved for SC Mittal Steel SA Galati, provided in the G.D. no. 55/13.01.2005² and authorized by Decision no. 340/31.12.2004 of the Competition Council.

(5) The opening investigation Order and the Note relating to it have been published on the web page of the Competition Council in order to allow all interested parties to send their comments.

(6) By letter no.DAAS/526/06.06.2005, AVAS, MPF and Local Council Galati, as State aid grantors, were informed on the opening of the investigation and on the fact that they have 15 days to send their comments. In the mean time, by addresses no DAAS/551/09.06.2005, 583/16.06.2005, 584/16.06.2005, 652/30.06.2005, 680/06.07.2005, 06/11.07.2005, 762/15.07.2005 supplementary information related to state aid granted to SC Mittal Steel SA Galati in 1993 – 2004 was requested from the state aid granting authorities.

(7) SC Mittal Steel SA Galati has sent its position to the Competition Council by no. RG. 4436/27.06.2005.

(8) The State aid granting authorities have answered to the Competition Council and submitted information regarding the aid granted to the Company during 1993-2004.

(9) On 06.07.2005 and on 19.07.2005, two meetings took place between the investigation team and the representatives of the MPF and on 19.07.2005 and the representatives of the State aid granting authorities. On 21.07.2005, another

² G.D. no. 55/2005 regarding the approval of the Strategy for the restructuring of the Romanian steel industry and the individual viability plans of the steel companies, updated for the period 2003-2008, published in the Official Gazette no. 127 from 09.02.2005.

meeting took place with the representatives of AVAS and SC Mittal Steel SA Galati.

(10) On the 16th of August 2005, the investigation report was submitted for comments to the interested parties. The initial deadline to submit comments was August 24, 2005. At the request of Mittal Steel Galati this deadline was extended until August 31, 2005 and subsequently until September 2nd, 2005. Mittal Steel's comments were received on 3.09.2005, beyond the set deadline. By the address VP4/2768/29.08.2005 and no. RG 6748/31.08.2005, AVAS and Local Council Galati informed the Competition Council that there are no comments on the conclusion of the investigation report.

(11) The investigation was extended by Order of the President of the Competition Council no. 302/14.11.2006. The extension order and the reasoning note was communicated to A.V.A.S., M.F.P., C.L. Galati, C.J. Galati and S.C. Mittal Steel S.A. Galati. They were published on the Competition Council's website in order to allow the interested persons to submit their comments.

(12) S.C. Mittal Steel S.A. Galati sent its comments by address no. 488/12.12.2005. By address registered at the Competition Council with no. RG 1338/08.02.2006, S.C. Mittal Steel S.A. sent additional comments in response to the Note on the extension of the investigation, providing that it reconsidered its position towards the findings of the investigation and it decided to voluntarily reimburse the amounts which are object of the investigation.

(13) By letter, registered at the Competition Council with no. DAAS/383/06.03.2006, Mittal Steel informed the Competition Council that it reimbursed the amount of ROL 346,640,577,474 (RON 34,664,058) and the related interests in amount of ROL 79,619,278,952 (RON 7,961,927). The Romanian authorities (Galati Local Council, Galati County Council and Ministry of Public Finance) have confirmed the payment by letters no. DAAS/392/07.03.2006, DAAS/424/09.03.2006, respectively no. RG 2394/10.03.2006.

II. DESCRIPTION OF S.C. MITTAL STEEL S.A. GALATI

(14) SC MITTAL STEEL SA Galati is a steel Company. The core business of SC Mittal Steel SA Galati is represented by the manufacturing of hot and cold rolled steel products, heavy plates, sheets, including galvanised sheets, re-rolling billets and blooms, high diameter longitudinally welded pipes, spare parts for metallurgy, secondary products resulting from the technological flow, coke-chemical products, oxygen, nitrogen, argon etc. (CAEN code 2710). The steel products are used in the automotive industry, shipbuilding, the construction industry, re-rolling and forged products, pipes and wire drawing.

(15) SC Mittal Steel SA is organized as a joint stock Company since 1991. In november 2001 the Company was sold to LNM Holdings N.V. (Netherlands)

("LNM"), which acquired approximately 91.5828% of the share capital. As of 31st December 2004 the shareholding structure was the following: LNM hold 789,552,813 shares (99.4%), while other legal persons hold 1,809,478 shares (0.2%) and other physical persons 3,033,411 shares (0.4%).

(16) In 2001, Mittal Steel drew a Business Plan in order to restructure the Company. The IBP had been elaborated and was discussed with the Commission. One of the main elements of the business plan was represented by the financial restructuring of the Company, by converting part of the budgetary debts into shares and by exempting from payment of the penalties and delayed increases.

III. DESCRIPTION OF THE AID MEASURES

(17) Mittal Steel SA Galati is included in the list of State aid beneficiaries mentioned in Restructuring Strategy of the Steel Sector, approved by G.D. no 55/2005. Every aid measure provided in the final national restructuring program and individual viability plans approved by the Romanian authorities was subject to final assessment by the European Commission concerning the fulfillment of the criteria laid out in Article 9(4) of Protocol 2 to the Europe Agreement and they were approved by the Council. For benefiting of State aid in an amount equal with the ceiling provided by the National Restructuring Programme, Mittal Steel Galati has to respect the business plan approved by the EU Council. In any case, the total amount of gross restructuring aid granted and paid in the period 1993-2004 cannot exceed ROL 30.598 billion (RON 3.059 million). Any aid beyond the threshold is illegal and subject to recovery.

III.1 The State aid ceiling for the restructuring of SC Mittal Steel SA, approved by the European Commission and the EU Council

(18) The Competition Council takes the view that the procedure for the approval of the state aid granted in the steel sector comprises three steps:

1) As foreseen in Protocol 2, the Competition Council assessed and approved the State aid package to Mittal.

(19) In 2001, the Government of Romania issued the Emergency Ordinance no. 119/2001³. By letter no. 128/16.01.2002, filed with the Competition Council with RS-AS no. 128/16.01.2002, the Authority for Privatization and the Management of the State Portfolio (presently AVAS) has submitted the notification form for the

³ E.G.O. no. 119/2001 regarding some measures for the privatization of S.C. Sidex S.A. Galati, published in the Official Gazette no. 627 from 05.10.2001;

State aid measures contained in E.G.O. no. 119/2001, along with the restructuring plan of SC Mittal Steel SA Galati..

(20) Subsequent to the analysis of the notification, the Competition Council issued Decision no. 99 from 03.04.2002 authorizing the individual state aid for SC Mittal Steel S.A. Galati. The state aid granted to SC Mittal Steel SA Galati aimed at compensating losses from economic activity had as objective the restructuring as well as environmental protection. The total authorised amount was ROL 37,858 billion.

(21) In August 2002, by letter no. 46965/09.08.2002, filed with the Competition Council no. RS-AS 49/23.08.2002, the Galati Local Council has notified the intent to grant an aid for SC Mittal Steel SA Galati. By Decision no. 395/2002, the Competition Council has authorized the state aid for SC Mittal Steel SA Galati, in amount of ROL 243,4 billion.

2) *The Individual business plan for Mittal Steel together with the Decision of the Competition Council were submitted to the Commission*

(22) The European Commission assessed the business plans and the aid granted to the steel companies. The scope of assessment of the restructuring strategy by the Commission encompasses not only the Individual business plans as such, but also a control of any other measure that was potentially or actually granted to the beneficiary. The reason is that the total picture of all measures granted to the beneficiary is necessary in order to be able to assess the proportionality of the aid measure.

(23) In this respect, the Commission also assessed whether the qualification of cancellations of debts towards the local authorities represented an additional aid measure or not. It concluded that this measure could not be qualified as non-aid on the basis of GEO 40/2002, since GEO 40/2002 was not a general measure.

(24) The Commission then assessed the Individual business plan for Mittal Steel as submitted in its version of December 2004 and approved it. The approval provided for an aid ceiling for Mittal Steel of ROL 30,598 billion.

(25) Following this assessment, the incentives provided by E.G.O. no. 119/2001 - the exemption from the payment of tax on profit was limited until 31st December 2004 in accordance with the provisions of E.G.O. no. 123/2004.⁴ and by E.G.O. no. 134/2004⁵

⁴ E.G.O. no. 123/2004 for the amending and completing the Law no. 571/2003 regarding the Fiscal Code, published in the Official Gazette no. 1154 from 07.12.2004.

⁵ E.G.O. no. 134/2004 for amending and completing the E.G.O. no. 119/2001 regarding some measures for the privatization of S.C. Sidex S.A. Galati published in the Official Gazette no. 1234 from 21.12.2004. By Law no. 122/2005 for the approval of E.G.O no. 119/2001 regarding some measures for the privatization of

3) In december 2004, the European Commission provided to the EU Council the final assessment of the National Restructuring Programme and of the individual business plans.

(26) The National Restructuring Programme and the individual business plans were approved by the EU Council on July 2005.

(27) As a consequence, during the period between 1993 and 31.12.2004 a total amount of State aid amounting to ROL 30,598 billion was allowed for Mittal Steel. This amount was laid down in the Accession Treaty. The Competition Council takes note that the Accession Treaty was ratified by the Romanian Parliament. According to Article 11(2) from the Romanian Constitution, the Treaties ratified by the Parliament are part of the internal law. Any aid which goes beyond this amount is illegal and must be recovered.

(28) The facilities mentioned below were received by Mittal in excess of the above mentioned threshold, were not notified to the Competition Council nor included in the approved threshold and are as follows:

A. Exemption from paying of some penalties and delay increases owed to the local budget, in amount of ROL 56.9 billion, granted by the Local Council of Galati City, based on Local Council Decision no 144/2000, on granting some tax payment facilities to the local budget.

(29) These facilities consist of: exemption from paying delay increases related to salary taxes, taxes related to the means of transport, incomes from concessions and field taxes. According to Local Decision no 144/2000, the exemption from paying delay increases was granted to Mittal Steel only if the main debts, in force when the decision was adopted, were paid until November 30th, 2000. Also, the exemption was granted for the delay increases related to the main debts that were paid until the moment when the Local decision no 144/2000, came into force.

B. the debts arising from the invoices submitted to Mittal Steel by its utility providers were converted into shares (swap). The VAT element relating to theses debts were not part of the above swap conversion and were cancelled according to art.7 letter b from GEO no 119/2001.

(30) The amount of financial advantage granted to Mittal Steel was determined by the Competition Council taking into consideration an interest of 0.1% per day for a medium period of 30 days, from the moment when the obligation of payment of the VAT arose, until those amounts became educible. This interest,

in the amount of ROL 5.964 billion, would have to be paid by Mittal Steel to the utilities supplier.

C. *Exemption from paying some penalties and delay increases owed to the county budget, in amount of ROL 14.2 billion. This exemption was granted by the County Council based on County Council's Decision no 182/29.05.2002. The decision was adopted for applying the provisions of GEO no 40/2002 for the recovery of budgetary arrears.*

D. Exemption from payment of tax related to some buildings granted according to GO no. 36/2002⁶ Local Council Decision no 16/27.02.2003

(31) According to art. 9 para. (3) from G.O. no. 36/2002 certain special constructions are exempted from the payment of building tax. Such constructions are:

- public institutions buildings;
- education institutions buildings;
- historical monuments, and others.

(32) Also, some special constructions⁷ are exempted from the payment of building tax such as:

- rolling ways;
- wells, sub terrain inclined platforms and pit balusters ;
- mining pit;
- chimneys;
- cooling towers;
- dams and accessories constructions;
- dam, annex constructions and cantons for interventions against floods;
- hydrometrics constructions,
- other similar constructions declared as such by the Local Council.

(33) The exemption from payment of tax related to some buildings granted according to GO no. 36/2002 are as follows:

- ROL 26.161.858.113 based on Local Council Decision no 16/2003 on approving the framing, in Annex 2.7.20 of GO no 36/2002, of some buildings owned by Ispat Sidex SA;
- ROL 45.223.506.984, on G.O. no 36/2002.

E. *Incentives granted by the Local Council Galati on the basis of G.E.O. no. 40/2002⁸*

⁶ G.O. no. 36/2002 on local taxes, published in Official Gazette no. 92 on 02.02.2002

⁷ In the meaning of the present Ordinance, special constructions means constructions which are not enclosures, or enclosures, but which are not organized for activities.

⁸E.G.O no. 40/2002 for the recovery of budgetary arrears, published in the Official Journal no. 233 from 08.04.2002

(34) In 2002, having in view the provisions of E.G.O. no. 40/2002, Galati Local Council has concluded with SC Mittal Steel SA Galati an agreement to reschedule some obligations due to the local budget. According to the agreement, SC Mittal Steel SA Galati obtained the exemption from payment of some penalties and delay increases owed to the local budget, whereas the principal was paid according to a rescheduling agreement. The exemption from payment of the budgetary obligations for SC Mittal Steel SA Galati is in amount of ROL 243.4 bill.

(35) The scheme provided by E.G.O. no. 40/2002 was not assessed by the Competition Council. In order to assess the compatibility of the incentives granted based on E.G.O. no. 40/2002 the Competition Council received the notification of all individual allocations and the conditional granting of these upon the implementation of a restructuring or investment plan, as the case may be.

(36) By Decision no. 395/2002, the Competition Council authorized the individual allocation consisting in the exemption from payment of some debts due by S.C. Ispat Sidex S.A. to the Galati local budget. The incentives were authorized as State aid for protection of the environment, SC Mittal Steel SA benefiting from these in 2003. Later, the Competition Council reanalyzed by Decision no. 340/2004 the State aid provided in the viability plan of SC Mittal Steel SA Galati and in the National Restructuring Strategy of the steel industry in Romania. The incentives granted based on E.G.O. no. 40/2002 were not taken into consideration when determining the ceiling of the State aid.

F. Debts rescheduling for SC Mittal Steel SA Galati according to Law no. 122/2005

(37) The new payment reschedulings were granted to SC Mittal Steel SA Galati after the ceiling of the state aid allowed to be granted to the company was established. Art. 15 of Law no.122/2005 provided that „amounts representing social insurance contributions, health social insurance contributions and contributions to the Fund for the payment of unemployment benefits due for the first 36 months from the conclusion date, remained untouched according to art. 14, are being rescheduled and paid in 12 equal monthly instalments, starting with January 1st, 2006”.

(38) According to provisions from the rescheduling agreements an 21.9% per year interest rate applied to the amounts to be reimbursed by S.C. Mittal Steel S.A. Galati which represents the interest rate provided by the Romanian legislation in force⁹. The amount of debts rescheduled is of ROL 2,183.33 billion (RON 218.33 million)

⁹ Hotărârea Guvernului nr. 67/2004 pentru stabilirea nivelului dobânzii datorate pentru neachitarea la termenul de scadență a obligațiilor de plată și pe perioada pentru care au fost acordate îlesniri la plată,

IV. THE REASONING FOR OPENING AND EXTENDING THE FORMAL INVESTIGATION PROCEDURE

(39) On February 2005, experts of the European Commission have noticed that the amount of USD 7.3 million (ROL 243,490 million) granted on the basis of E.G.O. no. 40/2002¹⁰ was not included in the State aid ceiling provided by the National Restructuring Strategy of the Steel Industry. As a consequence, it can not be considered compatible and it goes beyond the maximum approved amount, according to Protocol 2. Also, Mittal Steel Galati benefited of new rescheduling debts. Also, S.C. Mittal Steel S.A. Galati benefited of new payment incentives related to some contributions due to the state budget in amount of ROL 2,183.3 billion (RON 218.33 mil). Since supplementary information submitted by the Galati Local Council, Galati County Council and the utilities suppliers granting state aid for SC Mittal Steel SA Galati show that the company has benefited from state aids other than those included in the National Restructuring Strategy and the Individual Business Plan, the Competition Council decided to extend the investigation.

(40) The Competition Council notes that any state aid granted over the threshold approved by the European Commission and the E.U. Council together with the Strategy and the individual business plans, constitute an infringement of the provisions of ECSC Protocol 2 and of the Addendum to the Protocol.

(41) According to Protocol 2 on ECSC products, the restructuring aid must be limited to the minimum necessary to enable the restructuring to be undertaken in light of the company's or its shareholders existing financial resources. The State aid must be strictly limited to the level required to achieve the objectives laid down in the restructuring strategy. It must be borne in mind that according to settled case-law, the principle of proportionality requires that the measures adopted by Community institutions must not exceed what is appropriate and necessary for attaining the objective pursued

(42) The State aid ceiling was established with EC experts taking into consideration that the company have been fulfilling EC viability criteria since 2003. The minimum required aid was set so to ensure that most of the company's debts would be exempted. Also, it was decided that other fiscal incentives would be necessary such as VAT and custom duties exemptions or profit tax exemption. However, the aid level must respect the ROL 30,598 bill. ceiling.

V. COMMENTS OF S.C. MITTAL STEEL S.A. GALATI

publicată în Monitorul Oficial al României, Partea I, nr. 104 din 4 februarie 2004, abrogată prin H.G. nr. 784 din 14 iulie 2005 privind stabilirea nivelului dobânzii datorate pentru neachitarea la termen a obligațiilor fiscale.

¹⁰ E.G.O. no. 40/2002 for the recovery of budgetary arrears, published in the Official Gazette no. 233 from 08.04.2002;

V.1. The character of State aid of the new rescheduling granted in accordance with the Law no. 122/2005

(43) The rescheduling agreements concluded with the MPF on the basis of E.G.O. no. 119/2001, modified by Law no.122/2005. SC Mittal Steel SA Galati claims that these agreements do not comprise state aid elements because the interest paid to the Romanian state is higher than the interest normally charged by commercial banks in Romania. An interest rate of 21.9% p.y. is much higher than the normal rate paid by the company to commercial banks. SC Mital Steel SA Galati added that they analyze the possibility to repay the entire debt, considering the interest rate related to these agreements is much higher than the market interest rate.

V.2. Comments referring to the exemption from payment of the taxes according to G.O. no. 36/2002 (45.223.506.984 ROL)

(44) Mittal argues that the difference between Annex 1 and Annex 2 of LCD 16/27.02.2003, in respect of the object thereof as per the categories of special constructions, is not reflected in the Report. Annex 2 to LCD 16/27.02.2003 clearly and undoubtedly indicated points 1-19 of art. 7 in the List, which correspond to the category "individualized constructions" as well as the inventory value for each category.

(45) The inclusion of certain constructions in the category of non-taxable special constructions determined according to art. 9(2) of GO 36/2002 do not represent a state aid measure as:

- (i) all undertakings may benefit from the respective incentive under the same conditions;
- (ii) the fiscal authorities do not have the power to decide under what circumstances does the measure apply to each individual beneficiary, thus being unable to discriminate between undertakings.

VI. ASSESSMENT OF THE STATE AID MEASURES

(46) By letter no. 383/06.03.2006, Mittal Steel Galati has informed that it had voluntarily reimbursed the amount of ROL 346,640,577,474 (RON 34,664,058) representing:

- ROL 56,868,335,744 (RON 5,686,834) representing exemptions from the payment of penalties and delay penalties due to the local budget, granted by the Galati Local Council based on Decision no. 144/2000 ("LCD 144/2000") regarding the granting of facilities to payment of taxes, fees and other revenues to the local budget;
- ROL 243,419,193,710 (RON 24,341,919) representing facilities granted by the Galati Local Council based on GEO no. 40/2002;
- ROL 26,161,858,113 (RON 2,616,185) representing exemption from the payment of fees related to buildings of a similar nature to those mentioned in points 1-19 from Annex no. 2 to GO no. 36/2002, granted based on LCD no. 16/2003 regarding the approval of compliance to annex 2, point 7, subpoint 20 of GO no. 36/2002 of some special buildings owned by S.C. Mittal Steel S.A.;
- ROL 14,226,795,658 (RON 1,422,680) representing exemption from the payment of budgetary obligations granted by the Galati County Council based on GEO no. 40/2002;
- ROL 5,964,394,249 (RON 596,439) representing annulment of not-recovered collected VAT until the closing of the privatization by the utilities suppliers, related to converted debts granted based on art. 7 b of G.E.O. no. 119/2001 by the Ministry of Public Finance.

(47) In addition, Mittal Steel Galati paid interest related to the reimbursed state aids, calculated from the date the aid was made available to the company until the date of reimbursement of the aid. The interest rate used was of 6% p.a. This rate corresponds to an interest rate obtained by Mittal Steel Galati in normal market conditions in January 2002 from the Bank [...] ¹¹ for a loan of [...] ¹⁰. The interest calculated as such amounts ROL 79,619,278,952 (RON 7,961,927). The Competition Council takes the view that the interest rate is appropriate and the recovery of such interest will re-establish the previously existing situation.

(48) The Romanian authorities (Galati Local Council, Galati County Council and Ministry of Public Finance) have confirmed the payment by letters no. DAAS/392/07.03.2006, DAAS/424/09.03.2006, respectively no. RG 2394/10.03.2006.

(49) Taking into consideration the above mentioned letters, there is no aid anymore with regards to the above mentioned measures and the object of the present decision is represented by the rescheduling granted based on Law no. 122/2005 and the exemption from payment of special building fees according to GEO no. 36/2002 (point 1-19 Annex no. 2 to the ordinance).

¹¹ Confidential data

VI.1. The State aid character of the measures

(50) In line with article 9(1)(3) of Protocol 2, the State aid, in any form whatsoever, is incompatible with the Europe Agreement in so far as it may affect trade between the European Union and Romania, except derogations allowed pursuant to the ECSC Treaty.

(51) Though the rescue and restructuring State aid for the steel sector is prohibited under the Community acquis¹², having in view the social and economic importance of this industry for Romania, article 9(4) of Protocol 2 stipulates that Romania may exceptionally grant such aid to the steel mills.

(52) In accordance with the European Court of Justice Case Law and the European Commission decisions, the “*State aid*” concept, as defined by Article 87(1) of the EC Treaty, consists in the following four defining elements:

- (i) a benefit
- (ii) granted through State resources
- (iii) to a certain undertaking or sector (selectivity),
- (iv) which potentially distorts competition and affects trade between (in this case) the EU and Romania.

VI.1.2. Exemption from the payment of the taxes related to the special constructions, granted on the basis of Government Ordinance no. 36/20002 (Annex no. 2 to Local Council Decision no. 16/27.02.2003 pct 1-19)

(53) It is important, especially in the case of taxation or social policy measures, to distinguish between the situation whereby the beneficiaries are certain undertakings or the production of certain goods and that whereby the measures in question have a cross-sectoral impact and are intended to favor the whole of the economy. In the latter case, there is no state aid, but a general measure.

(54) In case of the measures provided in Article (3) of G.O. no. 36/2002, a distinction is necessary between the exemption operating by virtue of the G.O. and the exemption granted by Local Council decision.

(55) In 1991, horizontal fiscal legislation was created that imposed, on every undertaking, a tax on land and "...enclosures." that it owned. The term

¹² *Comunicarea Comisiei nr. C(2002) 315 privind ajutorul pentru salvare și restructurare și ajutorul pentru închidere în sectorul siderurgic*, publicată în Jurnalul Oficial al Comunităților Europene (JOCE) nr. C 70 din 19 martie 2002

"enclosures" in the legislation was not clearly defined, was meant to cover buildings on the land. However, after some time it became clear, as a result of complaints received from many undertakings, that local Councils (whom are responsible for the collection of the tax) were applying an interpretation to the meaning of the term enclosures (not envisaged by the legislation) to include structures such as wells, galleries, roads, bridges, gangways, construction trestles, technology installations and railways. In many instances it cases it was felt that these Local Councils were deliberately applying a broad interpretation as a revenue generating opportunity for local budgets.

(56) In 1998, the above legislation was modified (by providing exemptions), the primary purpose being to clarify and define those structures that fall within the definition of the term "enclosures": thereby preventing Local Councils from applying a broad interpretation.

(57) Regarding the special constructions exempted by law, the Competition Council takes the view that the clarification of the legislation, as indicated above, does not constitute a fiscal exemption in the true sense of the term. In any event its impact will be the removal of the discretion enjoyed by Local Councils in the interpretation of the legislation. In Competition Council's view, the existence of such a discretion provided a greater state aid threat that any selective consequence (whether intended or not) arising from the legislation.

(58) The legislation is horizontal and could apply to any undertaking, in any sector, whose structures fall within the exemption. The initial concerns regarding the favoring of the manufacturing sector is acknowledged. However, there is no arbitrary application of the legislation and the fact that one sector of the economy can take advantage of it, does not remove the horizontal nature of the legislation. In Romania the provision of financial and legal services is growing and Romania has some very large undertakings in these sectors that may also take advantage of the legislation.

(59) In any event, where structures such as railways, roads and bridges are secondary to the productive capacities, they do not form taxable elements.

(60) The Competition Council concludes that the exemption from the payment of the taxes related to the special constructions, granted on the basis of Government Ordinance no. 36/20002 (Annex no. 2 to Local Council Decision no. 16/27.02.2003 pct 1-19) is a general measure and thus does not constitute State aid.

VI.3. New debts rescheduling for SC Mittal Steel SA Galati on the basis of Law no. 122/2005

(61) The rescheduling provided by Law no.122/2005 are granted from State resources and have a selective nature, being provided only in favor of S.C. Mittal Steel S.A. Galati.

(62) The rescheduling contracts allow S.C. Mittal Steel S.A. Galati to pay the debts accrued in the first 3 years after the completion of the privatization. The debts rescheduling was granted for a 2-year period, with 1 year grace period. SC Mittal Steel SA Galati will reimburse the amounts postponed in 12 installments starting with 1 January 2006. The company is paying legal interest to the State starting with 1 January 2005 until full payment of the debt. The annual legal interest rate is 21.9%.

(63) Based on the latest available financial statements (as of December 31st, 2004) and current market conditions, the bank [...] ¹³ mentions in an internal letter sent to Mittal that the interest rate for up to 1 year for RON 215,072,826.60 is as follows: [...]. The Competition Council notes that the commercial banks could grant loans for payment of the budgetary debts in with more advantageous terms for SC Mittal Steel SA Galati than those provided by the rescheduling agreement with the Ministry of Public Finance.

(64) As a consequence of the high interest rate established by the Ministry of Public Finance, Mittal Steel Galati reimbursed the rescheduled debts during 2005. The Competition Council takes note that Mittal Steel Galati has no longer any rescheduled debts to the Ministry of Public Finance.

(65) Since the interest rate established by the Ministry of Public Finance was much higher than the interest rate established in market conditions, it results that the measure does not confer an economic advantage to SC Mittal Steel SA Galati. Consequently, the Competition Council's doubts regarding the State aid nature of this measure were removed.

VI.2. CONCLUSIONS

(66) Mittal Steel Galati voluntarily reimbursed the amount of ROL 346,640,577,474 (RON 34,664,058) including related interest in amount of ROL 79,619,278,952 (RON 7,961,927). Therefore, the decision became without object as regards these measures:

- ROL 56,868,335,744 (RON 5,686,834) representing exemptions from the payment of penalties and delay penalties due to the local budget, granted by the Galati Local Council based on Decision no. 144/2000 ("LCD 144/2000") regarding the granting of facilities to payment of taxes, fees and other revenues to the local budget;

¹³ Confidential data

- ROL 243,419,193,710 (RON 24,341,919) representing facilities granted by the Galati Local Council based on GEO no. 40/2002;
- ROL 26,161,858,113 (RON 2,616,185) representing exemption from the payment of fees related to buildings of a similar nature to those mentioned in points 1-19 from Annex no. 2 to GO no. 36/2002, granted based on LCD no. 16/2003 regarding the approval of compliance to annex 2, point 7, sub point 20 of GO no. 36/2002 of some special buildings owned by S.C. Mittal Steel S.A.;
- ROL 14,226,795,658 (RON 1,422,680) representing exemption from the payment of budgetary obligations granted by the Galati County Council based on GEO no. 40/2002;
- ROL 5,964,394,249 (RON 596,439) representing annulment of not-recovered collected VAT until the closing of the privatization by the utilities suppliers, related to converted debts granted by the Ministry of Public Finance based on Art. 7 b) of GEO no. 119/2001.

(67) Payment rescheduling, granted according to provisions of Law no. 122/2005 in amount of RON 218,330,000 does not constitute state aid.

(68) Exemption from the payment of fees related to some buildings granted based on GO no. 36/2002, in amount of RON 4,522,351 does not constitute state aid.

DECIDES

Art. 1. Based on art. 21 (2) a) of Law no. 143/1999 on State aid, republished, payment rescheduling granted according to provisions of Law no. 122/2005 in amount of RON 218.33 million and the exemption from the payment of fees related to some buildings granted based on GO no. 36/2002, in amount of RON 4,522,351 do not constitute state aid;

Art. 2 The amount of ROL 346,640,577,474 (RON 34,664,058) including related interest in amount of ROL 79,619,278,952 (RON 7,961,927) has been reimbursed and consequently the investigation with respect to these amounts became without object.

Art. 3. The present decision becomes applicable when communicated.

Art. 4. According to provisions of art. 46 of Law no. 143/1999 on state aid, republished, the present decision may be appealed by interested parties at the Bucharest Court of Appeals, the Administrative Litigation Section, within 30 days from its communication.

Art. 5. The present decision will be communicated by the Secretariat General of the Competition Council to:

- Autoritatii pentru Valorificarea Activelor Statului, str. Cpt. Alexandru Serbanescu, nr 50, sector 1, Bucuresti;
- Ministerului Finantelor Publice, strada Apolodor, nr.17, sect. 5, Bucuresti;
- Consiliului Local al Municipiului Galati, str. Domneasca, nr. 38, Galati;
- Consiliului Judetean Galati, Str. Eroilor nr. 7, Galați;
- S.C. Mittal Steel S.A. Galati, Str Smardan, nr. 1, Galati.

Art. 6. The General Secretariat and the Directorate for State Aid Authorisation within the Competition Council shall follow the observance of the present Decision.

PRESIDENT

MIHAI BERINDE