

State aid – a major challenge for Romania in view of accession



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Last year the negotiations between Romania and the European bodies in view of accession to the EU were very tight on the Competition chapter, especially in relation to state aid matters. While the EU legislation in the competition field (including state aid) was rather rapidly enforced to a considerable extent as part of Romania's internal legal framework, the Commission's practice, the *acquis communautaire* and the correct implementation of the state aid rules raised many discussions and difficulties when it came to applying those rules in various situations. In addition, the lack of knowledge and experience of the Romanian authorities in granting state aid resulted in important aid amounts being granted and paid without receiving the Competition Council's authorization.

Although the State Aid Law came into force as of January 1, 2000 and part of the subsequent regulations by 2002, the Competition Council realized in 2004 that numerous companies received various forms of aid, that were to a large extent not notified for approval or, in some cases, incompatible. In addition, some of the aid approved by the Council appeared to have been wrongly or incompletely assessed and thus unjustifiably authorized, according to the Commission's review.

This sensitive situation was mainly due to Romania's recent accelerated privatization process and

the one element that made the companies attractive to potential investors was that their substantial historical debts towards the state budgets were to be written off at the privatization time.

Since most of these companies were in a very difficult financial and technological situation, they were granted various incentives (mainly the write-off of past debts, but, in many cases, also exemptions from future profit tax, VAT or custom duties) while the investors interested in acquiring them undertook to make certain investments in those companies.

Another part of the state aid never notified to the Competition Council was generated by various measures to support state-owned companies, mostly by loans under preferential conditions or state loan guarantees. The suppliers of the aid (in most cases, the Ministry of Finance) did not consider that such measures could represent state aid and consequently various state-owned companies have benefited from illegal aid.

Moreover, in order to stimulate private investors (particularly foreign companies) to invest in certain fields of activity or disadvantaged areas of Romania, starting from the early 90s the Romanian legal framework provided for extensive packages of incentives to those investing in the above mentioned sectors.

From 2004, the Competition Council realized the dimensions of the illegal aid that was granted in Romania from 2000 and initiated a huge campaign to consolidate its database and closely monitor both past aid and new aid intended to be granted by various Romanian authorities. Consequently, the Competition Council

gathered the necessary information to produce an inventory of the state aid granted to companies in disadvantaged areas and also in free zones. Subject to meeting already or even exceeding the regional aid intensity, certain companies were prohibited from further benefiting from the support measures provided by the relevant legislation.

At the same time, the Romanian privatization agency and the Ministry of Finance intensified their efforts and last year declared most of the aid granted and paid without having the Competition Council's prior clearance. Thus, between September 2004 and September 2005, the Competition Council adopted approximately 100 decisions to authorize state aid (in some cases pursuant to a formal investigation) and in five cases it decided that the aid was incompatible with the relevant regulations and the normal competition environment. For the same purpose of duly implementing the state aid legislation, the authority initiated the procedures for the recovery of illegal aid with respect to four companies.

As acknowledged by the European Commission in the Monitoring Report 2005 regarding Romania, recently released in October, the Competition Council has made important efforts during the last year to implement the *acquis communautaire* and relevant legislation and also to increase the efficiency of state aid control. Although the general impression was that Romania has made important progress in the state aid field, the European Commission outlined that the efforts should continue in order for the European standards to be met as required for Romania's accession to EU as of 1st January 2007. ■