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## Global Forum on Competition

### COMPETITION, STATE AIDS AND SUBSIDIES

#### Contribution from Romania

-- Session I --

*This contribution is submitted by Romania under session I of the Global Forum on Competition to be held on 18 and 19 February 2010.*

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## COMPETITION, STATE AID AND SUBSIDIES

### -- Contribution by Romania --

1. State aid matters are regulated at the European Union level, and such regulations are directly applicable to Romania as a EU Member State.

#### **1. State Aid Concept**

2. State aid is defined as an advantage in any form whatsoever conferred on a selective basis to “undertakings” by national public authorities. Because a company that receives government support obtains an advantage over its competitors, the Treaty of the European Communities (the “EC Treaty”) generally prohibits state aid unless it is justified by reasons of general economic development. To ensure that this prohibition is maintained and that the exemptions are applied equally across the EU, the European Commission monitors the compliance of state aid granted at the national level with EU rules.

3. It needs to be pointed out that the EU State Aid regulations do not apply to state aid provided to the agriculture and fishery sectors.

#### **2. Legal Restrictions on State Aids**

4. After receiving the notification, the European Commission qualifies any support measure as state aid only if it displays all of the following characteristics:

- There has been an intervention by the state or through state resources which can take a variety of forms (e.g. grants, interest and tax relief, guarantees, government holdings of all or part of a company, or the provision of goods and services on preferential terms, etc.);
- The intervention confers an advantage to the recipient on a selective basis, for example to specific companies or sectors of the industry, or to companies located in specific regions;
- Competition has been or may be distorted;
- The intervention is likely to affect trade between and among the EU Member States.

5. By contrast, general measures are not regarded as state aid because they are not selective and apply to all companies regardless of their size, location or sector, as, for instance, general taxation measures or employment legislation.

6. In accordance with EU regulations, the following types of aid are considered as compatible with the EU common market:

- Aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;

- Aid in order to repair the damage caused by natural disasters.

7. Additionally, the following types of support may be considered compatible with the common market:

- Aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;
- Aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;
- Aid to facilitate the development of certain economic activities or of certain economic areas where such aid does not adversely affect trading conditions to an extent contrary to the common interest of the European Communities;
- Aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest.

8. Generally, state aid becomes more acceptable if it aims at the increase of the innovative capacity and the development of small and medium enterprises, or is intended for the development of human capital (training, job creation etc.).

### **3. Specific legal provisions in Romania**

9. Government Emergency Ordinance No. 117/2006, as approved by Law 137/2007 (“GEO 117”), is the normative act that regulates the national procedures in the field of state aid. GEO 117 provides, among other things, for the obligations of the Romanian authorities that may grant state aid and the beneficiaries of such state aid schemes, as well as the applicable sanctions in the event of a breach of these obligations.

10. Based on GEO 117, the power to authorise state aid plans was transferred from the Competition Council to the European Commission. The Competition Council now basically represents the national contact authority in the relations between the European Commission and public authorities and institutions that are state aid grantors, and beneficiaries involved in the state aid procedures.

11. Therefore, after Romania’s accession to the EU, the Competition Council became not only the national contact authority for the European Commission in this field, but it also plays the role of advisor for state aid grantors, co-ordinating the notification to the European Commission of the state aid measures that the various state-related institutions intend to grant and ensuring the elaboration of high quality state aid notifications and the fulfilment of the commitments assumed by Romania in this field as a member of the European Union.

12. As far as the monitoring of state aid granted in Romania is concerned, the Ordinance underlines the importance of the role played by the grantor in assuming the responsibility of obeying the rules in the area. The state aid grantors have the obligation to verify the way public money is being spent. Thus, the grantor is responsible for checking periodically if the state aid beneficiary is fulfilling the conditions assumed when receiving the state aid. If the beneficiary does not fulfil those obligations, the state aid grantor must act in order to eliminate the incompatibilities with the law in force.

13. On an annual basis, the grantors have to submit to the Competition Council reports on state aid granted in Romania. Also, at the Competition Council's request, the grantors have to submit any other data needed to fulfil the obligation assumed by Romania as a Member State. The state grantors are responsible for the accuracy of the data and information submitted to the Competition Council during the notification / informing or monitoring activity.

14. The Competition Council's role in monitoring activity is to elaborate, based on the grantors' reports, the state aid inventory, the annual report on the state aid granted in Romania and other necessary reports in view of fulfilling the obligations set for Romania as a EU Member State.

#### 4. The Use of State Aids in Romania

15. Subsidies and grants, tax exemptions, tax reductions and deferrals, write-off of default interest and penalties, soft loans, state guarantees, capital injections in the undertakings are usually the most widely used forms of state intervention.

16. According to the latest annual inventory on state aids granted in Romania issued by the Romanian Competition Council, covering data for the period 2006-2008, the largest recipients of state aid from the view point of the state aid nature were the following sectors (excluding fishery and agriculture): transport, services of general economic interest, the coal industry, research and development as well as environmental protection, support to investments and employment; a smaller portion of public funds was directed for rescuing and restructuring industrial companies as compared to the previous periods.

17. As it results from the table below that compiles information excerpted from the annual inventory on the evolution of state aids according to their nature over the period 2006-2008, state aid granted in Romania has taken mainly the form of direct subsidies, grants, government holdings of all or part of a company, which represented a share of 96.6% in total state aid (excepting agriculture, fishery, transportation, services of general economic interest and de minimis aid) in 2008 in the disadvantage of tax breaks, tax reductions and deferrals, write off of default interest and penalties or state guarantees which represented only 3.4%.

**Table 1. Figures in thousand Euros**

	2006	2007	2008
<b>State aid measures classified by their nature (excluding agriculture, fishery and de minimis aid)</b>			
<b>1. Direct Subsidies to companies (subsidies, grants, non-refundable funds)</b>			
<b>TOTAL</b>	<b>1,305,200.49</b>	<b>1,084,932.41</b>	<b>1,093,774.08</b>
<b>Out of which:</b>			
a) Transport sector	560,663.52	462,366.44	513,343.43
- Railroad transport	421,998.64	312,542.98	330,595.76
- Air transport	26,818.64	26,034.58	23,494.51
b) Coal	85,942.93	112,306.36	92,029.73
c) Services of general economic interest	413,335.20	424,628.53	348,877.75
d) Research and development	22,435.78	42,840.87	64,716.59
e) Regional development	4,725.37	11,536.84	38,292.57
f) Other subsidies (granted for protecting the environment, SME-s, rescuing-restructuring, employment, media and culture, other granting objectives)	218,097.69	31,253.38	36,514.01
<b>2. Tax breaks to selected companies or selected sectors (exemptions/allowances from paying budgetary obligations)</b>			

	<b>TOTAL</b>	<b>87,204.81</b>	<b>28,598.89</b>	<b>5,142.56</b>
<b>Out of which:</b>				
a) Regional development	23,879.22	8,713.61	3,585.84	
- Areas for which national regional development programmes have been elaborated	3,604.62	1,827.29	1,337.83	
- Deprived Areas	20,274.59	6,886.32	2,248.02	
b) Rescuing-restructuring (several manufacturing sectors)	41,758.67	17,654.89	1,183.50	
c) Research and development	155.71	1,766.28	0.00	
d) Services of general economic interest	73.96	346.56	373.22	
e) Coal	15,624.28	0.00	0.00	
f) Other exemptions/allowances from paying budgetary obligations (for tourism sector, media and culture, other objectives)	5,712.97	117.54	0.00	
<b>3. Granting of government-owned inputs (such as land, bandwidth, government facilities) to companies at a price below market levels</b>	Not granted	Not granted	Not granted	
<b>4. Government purchases at above market prices</b>	Not granted	Not granted	Not granted	
<b>5. Granting of loans at below-market rates</b>	Not granted	Not granted		
<b>6. Provision of loan guarantees at below-market rates</b>	Not granted	Not granted		

18. As to the objective of better targeted aid, Romania awarded 61,1% of total aid granted in 2008 for horizontal objectives of common interest such as research & development, regional aid, environmental protection, SMEs, rescue and restructuring, support to employment and training (excepting agriculture, fishery, transportation, services of general economic interest and de minimis state aid), which reveals an ascending trend of the provision of state aid for horizontal objectives (including regional aid) over the period 2006-2008. The largest proportion of horizontal aid granted in Romania in 2008 has been allocated for research and development (25.15% of total aid) followed by regional aid (16.28% of total aid).

19. The apparent growing trend of provision of state aid towards the development of regions can also be attributed to the national development programmes targeting the backward regions of Romania. It deserves to be mentioned that aid to promote economic development of areas where the standard of living is abnormally low or where there is serious underemployment is consistent with the article 107(3)(a) of the EC Treaty that establishes the criteria for qualifying as assisted area.

20. The state aid scoreboard issued by EC in the autumn of 2009 confirms that Romania followed over the last years the ascending trend of the EU vis-à-vis the provision of state aid for horizontal objectives.

21. With respect to the sectoral aid granted in Romania (not considering their regional destination or the nature of the state aid), the inventory shows a downward trend of their share in total state aid (excluding agriculture, fishery, transportation, services of general economic interest and de minimis aid) in 2008 (38.90%) in comparison with 2007 (46.91%). Actually, this decrease is in line with the standards set by the EC in its 2005 State Aid Action Plan. The largest proportion of the sectoral state aid was allocated both in 2008 and 2007 to the coal industry, the other sectors ceasing from benefiting from state aid. The state aid granted by the local public authorities with a view to compensate the public services of general economic interest represented the largest share in total state aid (excepting agriculture, fishery and transportation), respectively 55.71% in 2008 and 60.33% in 2007.

22. The latest inventory on state aid granted in Romania within 2006-2008 reveals as well that Romania allocated in 2008, 0.19% of its GDP for state aids (excluding agriculture, fishery, transportation,

services of general economic interest and de minimis aid), which represents a downward trend in comparison with 2006, when Romania allocated 0.51% of its GDP for state aids.

23. In terms of the magnitude, the same inventory shows that the state aid provided in Romania during the period 2006-2008 has been rapidly decreasing; whereas in 2006, state aid accounted to 496,433,400 Euros, in 2008, it accounted to 257,274,060 Euros (excluding agriculture, fishery, transportation, services of general economic interest and de minimis aid).

## **5. The Provision of Government-Owned or Government Controlled Inputs**

24. Law no. 213/1998, amended and completed, on public property and its juridical regime stipulates that public properties may be awarded only in administration to central or local public authorities, in concession or rent. It also stipulates that the renting and concession may be done only by auction, under the law provisions. Goods, activities or public services which are regulated by specific authorities may be awarded through license/authorisation only by the sector regulators to operators in order to activate on the respective markets.

25. For instance, radio-electric frequencies and numbering resources are scarce resources under the public property of the state. The administration and management of the radio-electric frequencies and of the numbering resources are carried out in accordance with the principles of objectivity, transparency, non-discrimination, and proportionality by ANCOM (National Authority in the electronic communications field).

26. According to the primary legislation in this field, i.e. EGO no. 79/2002 that regulates the basic activities related to electronic communications networks and services, in particular with respect to oversight and competition, the licenses for the use of radio-electric frequencies are granted through an open, transparent, and non-discriminatory procedure, within at most 6 weeks after receipt of a duly filled in application in this respect, accompanied by all the documents required, except for the licenses granted through a competitive or comparative selection procedure, for which the term is at most 8 months. In order to ensure that this process does not drive to restricting, hindering or distorting competition, the legislation stipulates that the right of use is awarded to the winner of a tender, following the offer of the largest amount for the license fee, while ensuring compliance with certain short listing technical, administrative and/or financial criteria.

27. In general, Romanian authorities address the Romanian Competition Council when they have doubts that the allocation of public goods and/or the award of public services would entail state aid. As per the community legislation and practice in this field, the Romanian Competition Council in its capacity of state aid advisor explains Romanian authorities involved the terms under which such procurement transactions may qualify as state aid and the legal options of making such operations compatible with community state aid rules.

28. In principle, when procurement transactions are conducted following the observance of an open, transparent and non-discriminatory procedure or an expert evaluation, the level of market sector support can be regarded as representing the market price corresponding to the respective procurement transactions and consequently, it is presumed that no state aid is involved.

## **6. Aid to Ailing Companies, Especially in the Context of the Financial Crisis**

29. Under the framework of the current economic and financial crisis, the Member States of the EU can grant state aids either in the context of the existing rules and regulations or by enforcing the temporary steps that the EC has put into place to address the current situation in the real economy and the financial sector.

30. Accordingly, aid to ailing companies can only be authorised as temporary rescue aid or as restructuring aid in the context of a restructuring plan. Both types of aid are subject to strict conditions. For example, rescue aid can only be granted in the form of a guarantee or loan for the time needed to develop a restructuring plan. It has to be reimbursed if no plan is presented within six months. Conditions for authorising restructuring aid are, for example, the presentation of a credible plan allowing the company to become viable again, respect of the one time last time principle, counterparts offered by the company in terms of capacity reductions etc.

31. In the financial sector, the European Commission approved under current exceptional circumstances the aid plans to bail out the banks through capitalisation, state guarantees, rescue and restructuring packages and other measures put in place by several Member States, but for Romania who did not face any difficulties in the banking sector (see State Aid Scoreboard, Autumn 2009 Update, Brussels, COM (2009)).

32. As per the norms provided by the EC's temporary framework for state aid measures and the conditions regarding the compatible limited amount of aid for the real economy, the following state aid measures have been proposed and implemented by Romanian authorities following EC approval, with a view to counter negative effects of the global financial-economic crisis over the Romanian economy:

***6.1 State aid scheme in the form of state guarantees granted to SMEs and large enterprises elaborated by EximBank enabling access to loans in the period of economic and financial crisis***

33. By implementing the scheme, the Romanian authorities expect to help SMEs counter the crisis, relieve their access to credits and ensure the continuity in their activity.

34. The scheme targets Romanian legal persons who were not in difficulty on 01.07.2008, but who entered into financial difficulty at the moment of the guarantee request, as a result of the present world economic – financial events. The beneficiaries can activate in all activity sectors, but for the production of armament, gambling, production of alcohol and tobacco, real estate transactions and acquisition of means of transport for persons with a capacity of up to 8 persons. The estimated number of beneficiaries within the scheme is of 180.

35. Through this scheme, EximBank guarantees on the name and on behalf of the Romanian State, maximum 90% from the value of a new credit granted by a commercial bank for investments and/or working capital.

36. The applicants may benefit from a reduction of the guarantee bonus for a maximum period of 2 years from the date when the guarantee was granted. A 25 % reduction is applicable to the SMEs while a 15% reduction is applicable to the large enterprises.

37. The maximum value of the credit subject to the guarantee shall not exceed the company's total costs with wages in 2008.

38. The lifetime of the state aid scheme is 2 years, namely 2009–2010. The guarantees fund amounts to 450 million RON for the two years. The total budget of the scheme for the implementing period is 20.34 million RON, out of which 11.30 million RON are allocated for 2009.

***6.2 The temporary national state aid scheme supporting Romanian enterprises affected by the present financial and economic crisis (maximum 500.000 Euros)***

39. In full compliance with the norms provided by EC's Temporary framework for state aid measures and the conditions regarding the compatible limited amount of aid, Romania elaborated a supporting

scheme to grant, without notification of individual cases, subsidised loans, loan guarantees at a reduced premium, risk capital for SMEs and direct aids of up to 500,000 Euros. These aids are allowed until the end of 2010 and may be granted to firms which were not in difficulty on 1st of July 2008, but entered into difficulty thereafter. The estimated number of beneficiaries within the scheme is above 1000 and the total budget of the scheme for the implementing period is of approximately 220 million Euros.

40. This state aid scheme is supposed to contribute to alleviating the difficulties faced by Romanian companies without a significant distortion of the market.

### **6.3 State Aid for Ford Romania (Car Industry)**

41. The financial aid consists in an 80% state guarantee provided by Romania to enable Ford Romania SA to access a 400 million Euros loan from the European Investment Bank. The aid supports the investment project envisaged by Ford at Craiova plant for the period 2008-2012.

42. The development project of Ford at the Craiova plant is part of a joint European venture to develop low CO2 emission engines and cars, assuming total costs of approximately 1.69 billion Euros over a 5-year period.

43. The entire project requires investments not only in Romania but also in Germany where low CO2 emission engines and cars are planned to be developed.

44. The European Investment Bank lends a total of 600 million Euros to Ford Europe for the development project, out of which 200 million Euros goes to Ford Werke GmbH in Germany and 400 million Euros to Ford Romania.

45. The 80% guarantee to be provided by Romania was considered by the EC as compatible with Article 107(3)(b) of the EC Treaty, which permits aid to remedy a serious disturbance in the economy of a Member State. In particular, Ford Romania would pay a premium for the guarantee and provide sufficient securities in case the guarantee would be drawn.

46. Apart from these measures, in 2009, in Romania, other state aid schemes have been elaborated in compliance with the existing community rules on state aid. The total budget of these schemes amounts to 6 billion Euros and represent national and community funds. It is estimated that more than 60,000 enterprises would benefit from these schemes in the following years depending on the implementation period. The larger part of the state aid measures envisages regional development aiming at creating and maintaining jobs as well as professional training.

## **7. Advocacy Institutional mechanisms**

47. The awareness of state aid in Romania is gradually increasing, thanks to the intense competition advocacy activities (publication of various guides, monthly bulletins, case law and legislative syntheses, other informational materials and organisation of seminars, roundtables and conferences throughout the country) performed by the Romanian Competition Council not only before accession to the EU but also thereafter. In this way, the authorities, other state aid grantors and the beneficiaries got acquainted to the requirements that need to be satisfied for the state aid to be compatible with EC regulations.

48. Also, a very important role in raising awareness on state aid rules among all the stakeholders involved after Romania's accession to the EU was played by the pre-consultation mechanism with the EC experts in the privatisation field set up at the Romanian Competition Council's request in June 2008. Within this mechanism, more than 50 information sheets on companies intended to be privatised by the Authority for State Assets Recovery (hereinafter AVAS) have been transmitted to the EC. Actually, the

technical consultations that took place with the EC under the umbrella of the pre-consultation mechanism initiated in the privatisation process aimed at preventing the existence of any incompatible state aid elements within the privatisation processes.

49. As a result of the setting up of the pre-consultation mechanism in the privatisation field, the Romanian authorities have ordered adequate measures aimed at ensuring compliance with state aid community rules, such as: the amendment of the privatisation legislation in the mining and R&D sectors, respectively the elimination of the certain tender conditions attached to the privatisation process that created premises for state sales at a price below market level and consequently to doubts that the privatisation process entailed state aid, the cancellation of privatisation procedures for certain companies acting in these sectors, as well as the revision of the privatisation strategies of certain companies, aiming to ensure that the tender itself as a method of privatisation was open, transparent and non-discriminatory so that the potential investors would not have been disadvantaged at an early stage and deterred from submitting a bid.

50. The role of adviser to all state aid grantors in drawing up of notifications, information sheets and in monitoring activities, or in the allegation of the notification before the EC safeguarded by Romanian Competition Council also after Romania's accession to EU complemented by the advocacy power of Romanian Competition Council to issue binding advisory opinions on draft normative acts that may have an anticompetitive impact and to propose amendments definitely increased the profile of the Romanian competition authority among all stakeholders involved in Romania.

51. Moreover, the Romanian Competition Council performs its activities in a transparent manner. As a proof, driven by the desire to improve the informal co-operation between the parties involved in the state aid field, the Romanian Competition Council put the foundation in the second part of 2008 of the Romanian State Aid Network, a portal created on a multi-annual base which aims at creating a cluster of state aid experts from the Romanian Competition Council and from the state aid granting institutions in order to strengthen their cooperation and a swifter implementation of the support measures, be it state aid or not, in compliance with the community provisions in the field, having as a final objective the support of the business environment and of the Romanian economy in general.

52. At the same time, through this portal, Romanian Competition Council ensures nowadays a smooth access to all the relevant information in the state aid field, so that the beneficiaries, the practitioners and the theoreticians have the necessary instruments to be informed on the trends in the state aid field both at national and at the community level. Finally, thanks to Romanian Competition Council's initiative, all the interested parties are now able to find on the website of the Network (<http://www.ajutordestat.ro/?pag=146>), the state aid schemes implemented in Romania, the applicable legislation and articles on state aid, projects to be performed within the Network, etc.