

DECISION OF THE COMPETITION COUNCIL
NO. 240 of 02.08.2004

on the state aid notified by the Authority for the Capitalization of State
Assets granted to S.C. CELHART DONARIS S.A. Braila

THE COMPETITION COUNCIL,

Taking into account the dispositions of Decree no. 57/2004 on the appointment of the members of the Competition Council,

Taking into account the dispositions of the Competition Law no. 21/1996, published in the Official Gazette, Part I, no. 88 of April 30, 1996, as subsequently amended and completed by Law no, 184/2004;

Taking into account the dispositions of the Law no. 143/1999 on state aid, published in the Official gazette, Part I, no. 370 of August 3, 1999, amended and completed by Law no. 603/2003,

Taking into account the dispositions of the European Agreement establishing an association between the European Communities and their Member States, on the one part, and Romania, on the other part, ratified by Law no. 20/1993, published in the Official Gazette, Part I, no. 73 of April 12, 1993;

Taking into account the dispositions of the Regulation on state aid for the saving and restructuring of companies in difficulty, published in the Romanian Official Gazette, Part I, no. 470 of July 2, 2002;

Taking into account the dispositions of the Regulation amending and completing the Regulation on state aid for the saving and restructuring of companies in difficulty, published in the Romanian Official Gazette, Part I, no. 521 of June 9, 2004,

On the following grounds:

I. PROCEDURE

(1) By note no. VP₃/456/29.04.2004 the Authority for the Administration of State Interests (subsequently transformed in Authority for the Capitalization of State Assets - AVAS) notified based on art. 6 of Law no. 143/1999 on state aid amended and completed by Law no. 603/2003, the intention of granting the individual state aid for the restructuring of S.C. CELHART DONARIS S.A. Braila.

(2) By DAAS note no. 347/18.05.2004 additional information regarding the production capacities of the company were requested. The Authority for the Capitalization of State Assets transmitted the reply to the additional information requested by address no. DCS/634/ June 3, 2004.

(3) The notice became effective on the date the information was correct and complete, respectively June 5, 2004.

II. DESCRIPTION OF THE STATE AID MEASURE

2.1. Legal basis for granting the state aid

- ? Law no. 137/2002, on some measures for accelerating the privatization;
- ? GD no. 577/2002, approving the Methodological Norms for the implementation of the Emergency Ordinance no. 88/1997 on the privatization of trading companies, as subsequently amended and completed.

2.2. Concrete modality of granting the aid

(4) The state aid proposed by AVAS is aimed at granting some facilities for the payment of budget obligations consisting in AVAS own claims, towards S.C. CELHART DONARIS S.A. Braila representing the exemption of a percent of 80% from its own claims derived from the dividends and moratory damages calculated for the delay payment of dividends amounting to a total of ROL 31,782,313,401.

2.3. Presentation of the beneficiary S.C. CELHART DONARIS S.A. Braila

(5) The state aid beneficiary is a private company, S.C. CELHART DONARIS S.A. Braila, established in 1959. The majority stock is hold by the consortium made up of S.C. ECOPACK S.A. Ghimbav and S.C. ECOPAPER S.A. Zarnesti from the year 2003 – the privatization year. The average number of employees in the year 2003 was of 1527.

(6) The privatization of the trading company was performed based on Law no. 137/2002 on accelerating the privatization process, within the process being then granted facilities for the payment of the historical debts according to the provisions of art. 18 (1) of the Law and the Methodological norms issued for its implementation. The sale offer was made as follows:

- The offer was published on September 13, 2003 in the newspapers *Adevarul*, *Azi*, *Monitorul de Braila* and *Wall Street Europa*;
- All the potential tenderers interested in acquiring the stock, who filed letters of intention were notified in writing about the privatization of the trading company;
- Only two presentation files were acquired, but only one participation tender was filed;

- The potential tenderers could make their own analysis in the company according to the legislation in force.

The consortium made up of S.C. ECOPACK S.A. Ghimbav and S.C. ECOPAPER S.A. Zarnesti purchased the stock of S.C. CELHART DONARIS S.A. Braila by signing the sale-purchase agreement no. 47/ October 28,,2003.

(7) By the Decision of the Competition Council no. 50/2004 the economic merger achieved by acquiring the direct control by the trading companies ECOPACK S.A. Ghimbav and ECOPAPER S.A. Zarnesti on S.C. CELHART DONARIS S.A. Braila was authorized.

(8) At the date of the subscription of the sale-purchase agreement for shares data S.C. CELHART DONARIS S.A. had registered with the Trade Register a registered capital of ROL 188.610.025 thousand divided in 7,544,401 shares having a par value of ROL 25,000 lei. As a result of the ownership transfer bn the shares from January 14, 2004, the structure of the shareholding of S.C. CELHART DONARIS S.A. BRAILA is the following:

Table no. 1

SHAREHOLDERS	CAPITAL HOLDINGS	
	Number of shares	Share in the registered capital (%)
S.C. ECOPACK S.A.	5,279,775	69.983
S.C. ECOPAPER S.A.	250	0.003
S.I.F. Banat - Crisana	2,126,770	28.190
Others	160,833	2.128
Total	7,544,401	100.000

Source: AVAS

(9) The company is operating in the field of industry. S.C. CELHART DONARIS S.A. main line of business is production of stationary cellulose and various sorts of paper. The company also supplies services on its own plant railways for the company in the neighborhood, not having railways for the transport of merchandize, it distributes drinking and industrial water to the neighbor villages, as well as electric power to the consumers in the perimeter of the company and in the limitrophe area.

(10) S.C. CELHART DONARIS S.A. is especially operating for the domestic market, the share ranging from one year to another depending on the market conditions, the percent of the Romanian market being majority, reaching in 2003 89 %, as presented in table no. 2:

Table no. 2

- thousand ROL -

	2000	2001	2002	2003
Total turnover	707,855,444	767,458,963	968,834,565	1,127,343,928
Turnover on the Romanian market	529,790,602	642,809,147	736,733,907	999,645,159
Turnover on the Romanian market/ total turnover	75%	84%	76%	89%

Source: AVAS

(11) S.C. CELHART DONARIS S.A. produces and sells the following products:

- whitened stationary cellulose sulphate from leaf-bearing trees;
- O-type paper – surface treated for offset printing;
- S-type paper – treated paper for writing;
- I-type paper – treated paper for printer.

A part of the cellulose manufactured in the company is used at the manufacture of paper within the domestic technological process, the rest being sold both on the domestic market and on the external market.

(12) The relevant markets operating on the market of stationary cellulose are the market of stationary cellulose and the market of paper productions.

(13) The market shares hold by the company for the main products manufactured and sold on the domestic market are presented in table no. 3:

Table no. 3

	2000	2001	2002	2003
Stationary cellulose	12.21%	10.86%	12.19%	4.47%
Paper	16.44%	16.46%	19.34%	12.19%

Source: AVAS

(14) The main competitors of S.C. CELHART DONARIS S.A Braila are S.C. SOMES S.A. Dej and S.C. COMCEH S.A. Calarasi.

(15) The main customers of S.C. CELHART DONARIS S.A for printing paper are: S.C. DIACON CORESI Bucharest; ROMHART Bacau; S.C. CARPATICA Brasov, R.P.D. Bucuresti; S.C. THIA TRADING Craiova; S.C. ROMPRAX Brasov, S.C. DIVERTA MEDIA RETAIL Bucharest, R.A. Monitorul Oficial.

For the stationary cellulose the following are among the customers of the company: S.C. PEHART Petresti, S.C. CEPROHART Braila, S.C. PERGODUR INTERNATIONAL Piatra Neamt.

(16) At present, from the total of the production capacities hold by the company only the paper machine no. 1 (with a capacity of 22,000 t/year) and the stationary paper plant (with a capacity of 45,000 t/year) are operating. The technological line being in conservation is made up of paper machine no. 2 with a capacity of 20,000 t/year and cellulose dehydration machine no. 1.

(17) The economic – financial results based on the data from the balance sheets of the last 4 years are the following:

Table no. 4

- thousand ROL -

Indicators	2000	2001	2002	2003
Turnover	707,855,444	767,458,963	968,834,565	1,127,343,928
Result of the year	94,734,207	13,537,028	11,007,353	-13,892,021

Source: AVAS

3. DESCRIPTION OF THE RESTRUCTURING PLAN

(18) [...]

(19) [...]

3.1. Technical – technological restructuring

(20) [...]

(21) [...]

Table no. 5 [...]

3.2. Environment restructuring

(22) [...]

Table no. 6 [...]

3.3. Financial restructuring

(23) When the privatization started, the company needed a financial restructuring in order for the production activity to function within normal parameters, besides the investments assumed by the agreement by the purchaser.

(24) In case of S.C. CELHART DONARIS S.A. Braila the measure of financial restructuring that shall apply is the waiving by APAPS to collect 80 % of the dividends

due for the year 2000 and not paid and the moratory damages calculated until the date of the subscription of the sale-purchase agreement for shares amounting to a total of ROL 31,782,313,401.

(25) The restructuring program, by the financial restructuring component, enables the possibility to increase the cash-flow, ensuring a stable cash-flow, fact that will relieve and alleviate the financial activity of the company. Thus the company will be able to pay its current debts towards the state and to distribute the necessary liquid assets in order to perform the investments programmed and necessary for the development and support of the production program in perspective.

(26) As a result of the implementation of the restructuring plan, the purpose is to reduce the consumption for raw materials, materials, natural gas and electric power and implicitly to increase the quality and reduction of the pollution in the area.

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

(27) The financial support measures are granted in view of S.C. CELHART DONARIS S.A. Braila restructuring, its privatization, as the company needed a financial restructuring in order to operate at the normal parameters of the production activity. The grant of the state aid, corroborated with the actions had in view in the restructuring program shall determine the increase of the economic efficiency of the company activity.

(28) These facilities consist in waiving by APAPS to collect 80 % of the dividends due for the year 2000 and not paid and the moratory damages calculated until the date of the subscription of the sale-purchase agreement for shares and its is granted in view of the company reliability.

(29) Analyzing the financial support measures, The Competition Council found that there is no doubt that they are financed from state resources and confers an advantage to S.C. CELHART DONARIS SA Braila. There also is no doubt that the financial measures adopted affect the trade with the member states of the European Union, given the fact that the products obtained by the company are also sold on the external market.

(30) In conclusion, the financial support measures granted are considered state aids and are subject to Law no. 143/1999 on state aid, amended and completed by Law no. 603/2003.

4. EVALUATION OF THE STATE AID MEASURES INTENDED TO BE GRANTED TO S.C. CELHART DONARIS S.A. BRAILA

(31) The objective of the state aid is the restructuring of S.C. CELHART DONARIS SA Braila in order to restore the reliability of the company at the end of the restructuring period. The state aid has to be analyzed according to the criteria of the Regulation on state aid for the saving and restructuring of companies in difficulty (hereinafter referred to as Regulation).

(32) S.C. CELHART DONARIS SA Braila did not benefited by state aids for saving and/or restructuring.

(33) The major dysfunction of S.C. CELHART DONARIS S.A. Braila is caused by the failure to use an important part of the existing technical endowment. The remaining value of the fixed assets in conservation represents more than 50% of the total remaining value of the fixed assets. The cease and passing in conservation of the plants of chemical cellulose and derived sub-products was caused by the cease of the plants of artificial fibers.

(34) As a result of the high degree of physical and moral wear of the machines and installation existing on the technological flow, a high consumption of electric power, natural gas and raw materials is registered, fact that imposes a greater volume of environment investments and investments for modernization, automation and optimization of technologies.

(35) The nonconformance between the capacity of the plant of whiten stationary cellulose (45,000 t/year) and the actual capacity of the plant of writing-printing paper (20,000 t/year) have a negative influence on the overall efficiency of the company.

(36) The liquidation of an important customer, S.C. DUNACOR S.A. Braila, led to the taking out of operation and passing in conservation, for an unlimited period of time, of two of the three existing plants for treatment of industrial water. The installations that remained in operation (water preparation in phase II and some equipment from the water preparation phase I) are operating in conditions of small efficiency (high consumptions of energy), as the pumping units were dimensioned for debits adequate to the necessities initially designed of the consuming productive installations.

(37) Starting from the analysis of the activity performed, for the reliability of the enterprise, the company planned to attain the following objectives:

- Modernization of the paper-cutting installation in plane formats and packaging of tops in A4 format;
- Modernization of the paper-cutting installation in bobbins;
- Replacement of the lubricating installation for suction rolls and cylinders;
- Optimization of the boiling technology by introducing the pre-impregnation phase and mounting a squeezing press at the washing installation;

- Modernization of the regeneration boiler;
- Re-putting in operation of the dehydrating machine no. 1;
- Reduction of water emissions at the manufacture of whitened sulphate cellulose and the manufacture of writing-printing paper;
- Reduction of emissions in the air at the manufacture of whitened sulphate cellulose;
- Reduction of solid residues;
- capitalization of stocks without movement;
- Quashing of the inventory objects taken out of use.

(38) The analysis of the notified measure was made according to the criteria of granting state aids comprised in the Regulation on state aid for the saving and restructuring of companies in difficulty.

5.1. Eligibility of S.C. CELHART DONARIS S.A – company in difficulty

(39) The grounds based on which it was established that S.C. CELHART DONARIS S.A is eligible to receive restructuring aid, being a company in difficulty are the following:

a) Reduction of the turnover

Table no. 7

- thousand ROL -

	2000	2001	2002	2003
Turnover	707,855,444	767,458,963	968,834,565	1,127,343,928
Turnovers in comparable prices 2000	707,855,444	589,467,034	631,215,644	642,929,455

Source: AVAS

Analyzing the evolution of the turnover in comparable prices 2000 a sinusoidal evolution is found, with a minimum in the year 2001 and an almost constant level during the period 2002-2003.

b) Increase of the stock volume

Table no. 8

- thousand ROL -

	2000	2001	2002	2003
Stocks	73,345,095	95,146,761	103,892,158	127,796,311
Stocks / Total Assets	20.96%	23.87%	23.79%	31.05%

Source: AVAS

As resulting from table no. 8 the stocks registered an ascendant trend, increasing by 72.26% in 2003 as compared to the year 2000.

Analyzing per total the costs registered in the year 2003 as compared to the year 2002 an increase of 123.06 % may be found. The structure of the stocks of finished products and merchandize registers a reduction from ROL 21.8 billion to ROL 1.3 billion. In exchange the stocks regarding the production in progress of being executed registers an increase of 214 % in the year 2003, from ROL 19.3 billion to ROL 46,2 billion.

This evolution of the structure of stocks indicates on one hand an intensification of the activity of marketing and sales and on the other hand major difficulties of the trading company during the fabrication cycle in finishing the begun products. This situation has a negative influence on the costs of the products.

c) Gross operation margin

Table no. 9 - thousand ROL -

	2000	2001	2002	2003
Resulted from operation	102,361,946	11,031,602	8,173,104	-4,267,068
Turnover	707,855,444	767,458,963	968,834,565	1,127,343,928
Gross margin from operation (%)	14.46%	1.44%	0.84%	-0.38%

Source: AVAS

The analysis of the indicator gross operation margin reveals a severe decrease showing that the company was not able to control the production costs in order to obtain the optimum price for the manufactured products. In addition, in the year 2003 the indicator has a negative value, the company failing to recover the costs incurred.

d) Evolution of the net result

Table no. 10 - thousand ROL -

	2000	2001	2002	2003
Net result	94,734,207	13,537,028	11,007,353	-13,892,021

Source: AVAS

It is found from the evolution of this indicator the fact that even the company registers loss only in the year 2003, per total the evolution of the net profit is descendent, the special impact being in the year 2001, when the net result decreased by approx. 7 times.

d) Evolution the de volume of debts

Table no. 11 - thousand ROL -

	2000	2001	2002	2003
Total debts	92,281,597	134,871,456	168,419,733	144,060,608
Equity	255,486,397	263,767,301	268,278,157	267,587,378
INDEBTEDNESS DEGREE (%)	36.12%	51.13%	62.78%	53.84%

Source: AVAS

The total debts of the company increased as compared to the year 2000 with 12% in the year 2001, with 65% in the year 2002, and in the year 2003 they decreased as a result of the fact that the company operated with only 2/3 of the capacity. The evolution of the indebtedness degree corroborated with the result of the financial year indicates a continuous depreciation of the future situation of the enterprise by the incapacity of capitals to generate profit to cover the loans contracted by the company.

e) Production over-capacity

It cannot be the case of production over-capacity for S.C. CELHART DONARIS S.A., given the fact that the company is not working anymore at the designed capacity; the capacity used registered a descendent evolution, mainly caused by:

- the closing of the company S.C. DUNACOR S.A. Braila, having the profile of production of fibers and artificial fibers and that determined the closing of the chemical cellulose plants and the afferent installations, these having a share of 50% from the total of the production capacity of the company and that at present are in conservation;
- the closing of the toilet paper machine, entailing great production costs because of the great degree of physical and moral wear;
- the functioning under capacity and finally the closing of the section Cardboards, because of the impossibility to manufacture duplex coated cardboards demanded more and more on the domestic market, the closing of some trading companies that used the duplex and triplex cardboard manufactured, as well as the fact that, in absence of the funds for the modernization of the cardboard machine, the installations were physically and morally obsolete.

(40) At the end of the year 2003 the company reached a difficult financial situation, determining the closing of the Section Cardboards and the dismissal of 640 employees from the total of 1518. The company was also obliged to contract in order to make the current payments a credit amounting to USD 800,000 from B.C. Ion Tiriac and a working ceiling credit amounting to USD 1,000,000 from BRD Societe Generale.

5.2. Belonging to a group

(41) According to the provisions of art. 2 (5) of the Regulation, a company belonging to a group is not normally eligible for granting the aid for saving and restructuring, except the case when it may be proven that the company difficulties are inherent and do not result

from an arbitrary allocation of costs and as difficulty are too serious in order to be solved in group.

(42) SC CELHART DONARIS SA is hold by SC ECOPACK SA and S.C. ECOPAPER S.A in percent of 69.986%.

(43) The company difficulties do not come from arbitrary allocations of the costs within the group, being the effect of the economic results obtained in the previous years by selling the major stock.

5. 3. Restoration of the company reliability

(44) The fact that the companies S.C. ECOPACK S.A. and S.C. ECOPAPER S.A. wanted to purchase S.C. CELHART DONARIS S.A. and to allocate from inherent sources considerable amounts for technical, technological and environment investments represents a strong ground in supporting the hypothesis that the company, as a result of the implementation of the restructuring measures, will become reliable.

(45) As a result of the implementation of the restructuring plan the company reliability is aimed to be obtained by means of:

- continuing the production activities for the profitable products taking into account the market demand;
- improving the economic-financial indicators and quality indicators of the manufactured products;
- decrease of the production costs and implicitly the decrease of the selling prices, thus obtaining a more secure and diversified selling market;
- meeting the requirements requested by the environment protection;
- externalization of the auxiliary activities of maintenance and repairs within the company.

(46) As a result of the measures, at the end of the implementation period of the restructuring program the attaining of the target indicators is aimed as follows:

Table no. 12

1. Net profit	Thousand ROL	33,000
2. Turnover	Million ROL	875,000
3. Number of employees	Persons	870
4. Equity	Thousand ROL	340,660
5. Duration of recovery of claims	Days	18.93
6. Duration of payment of debts	Days	59.78
7. Indebtedness degree	%	42.65
8. Economic reliability	%	6.79
9. Financial reliability	%	9.69
10. Cash-flow	Thousand ROL	+3,000

5.4. Avoidance of the significant depreciation of the competitive environment

(47) By granting the state aid and the application of the restructuring program of S.C. CELHART DONARIS S.A. the structure of the relevant market does not suffer any changes with anti-competitive effects, this operation being aimed at increasing the economic efficiency of the company by reducing the production costs and does not lead to any liquid assets surplus la un surplus that might be used in aggressive activities of competition depreciation on the market without any connection with the restructuring process.

(48) S.C. CELHART DONARIS S.A. holds on the market of stationary cellulose a small share, respectively 4.47% in the 2003 and on the market on the paper market a share of 12.19%. As the shares on the relevant markets of the company are negligible at the level of the country it is considered that there is no significant depreciation of the competition according to art. 13 of the Regulation.

(49) By the restructuring program S.C. CELHART DONARIS S.A. Braila is not strengthening significantly the domestic share market; it will recover some delays by improving the degree of using the capacities. In the branch of activity of the company there is a significant difference between the designed capacity and the operational one, in the context of an estimation of the future demand close to the designed capacity.

5.5. Aid limited to the minimum

(50) The restructuring program is financed from the purchaser's own sources and state aid, indicating the fact that the value of the state aid is reduced to a strictly necessary minimum in order for the proposed program to be finished under the operational conditions proposed by the company as beneficiary of the state aid.

(51) The contribution of S.C. CELHART DONARIS S.A. to the implementation of the measures comprised in the restructuring program represents 91.94% from the total financial effort. The requested state aid amounting to ROL 31,782 million exonerates the company from the payment of debts, allowing it to become eligible for crediting, therefore being limited to the strictly necessary minimum.

5.6. Intensity of the state aid and restructuring cost

(52) The value and intensity of the state aid have to be strictly limited until the level of achieving the objectives of the restructuring program (attaining the reliability).

(53) The total cost of the company restructuring amounting to ROL 394,388 million is made up of:

- | | |
|--|---------------------|
| - cost of the technical and technological restructuring: | ROL 230,595 million |
| - cost of the environment restructuring: | ROL 132,011 million |
| - cost of the financial restructuring: | ROL 31,782 million |

and is supported as follows:

- investor's own sources
- state aid

ROL 362,606 million

ROL 31,782 million

(54) The intensity of the state aid, calculated as ratio between the value of the state aid and the restructuring cost, has a value of 8.06%.

5.7. Observance of the principle “first and last time”

(55) S.C. CELHART DONARIS S.A. Braila has not received any aid for restructuring, observing therefore the provisions of art. 18 of the Regulation stipulating the fact that the restructuring aid has to be granted only once.

5.8. Monitoring and annual reporting

(56) According to the dispositions of art. 17 of the Regulation, the Competition Council permanently monitors the way in which the restructuring plan is being implemented in order for it not to deviate from attaining the objectives of the restructuring plan.

(57) The Competition Council will monitor the implementation of the restructuring plan until the end of the period in order to make sure that there are no increases of the production capacities, major deviations from the compliance of the restructuring measures and that the state aid will not lead to the creation of additional liquid assets that will be used for other activities than those included in the restructuring program.

6. CONCLUSIONS

(58) It was found that the state aid was notified before being granted.

(59) Taking into account the above-mentioned grounds, the Competition Council finds that the individual state aid intended to be granted to S.C. CELHART DONARIS SA is compatible with the normal competitive environment and does not significantly affect the trade with the member states of the European union.

DECIDES

Art. 1. The measure notified by the Authority for the Capitalization of State Assets for S.C. CELHART DONARIS S.A. Braila represents state aid in the sense of art. 2 (1) of Law no.143/1999, amended and completed by law no. 603/2003.

Art. 2. Based on art. 12 (2) c) corroborated with art. 14 (1) e) of Law no. 143/1999, as subsequently amended and completed, the state aid in view of restructuring that shall be granted to S.C. CELHART DONARIS S.A. Braila is authorized, provided art. 3 and art. 4 of this decision are observed.

Art. 3. The company is prohibited to increase the production capacity above the level afferent to the year 2003.

Art. 4. The company is obliged to fully implement the restructuring plan assumed.

Art. 5. The value of the state aid that is to be granted is of ROL 31,782,313,401.

Art. 6. This Decision becomes effective on the date of its communication.

Art. 7. According to the dispositions of art. 24 of Law no. 143/1999, as subsequently amended and completed, the Authority for the Capitalization of State Assets shall transmit to the Competition Council information regarding the state aid granted, in order to inventorying and monitoring it. The Authority for the Capitalization of State Assets will also transmit to the Competition Council annual reports regarding the implementation of the restructuring plan. The first report shall be transmitted within 6 months from the delivery of the decision.

Art. 8. According to the provisions of art. 29 of Law no. 143/1999 on state aid, as subsequently amended and completed, this Decision may be attacked by the persons concerned at the Court of Appeal Bucharest, Contentious Administrative Section, within 30 days from communication.

Art. 9. This Decision shall be communicated by the General Secretariat within the Competition Council:

- to the Authority for the Capitalization of State Assets, str. Cpt. Av. Alexandru Serbanescu, nr. 50, sector 1, Bucuresti;
- to S.C. CELHART DONARIS S.A. Braila, sos. Vizirului, km 10, cod postal 6100, jud. Braila.

Art. 10. The General Secretariat and the Department for State Aid Authorization within the Competition Council shall supervise the execution of this Decision.

PRESIDENT

MIHAI BERINDE