

DECISION No. 338

Of 31.12.2004

**Concerning the State aid granted to S.C. CSR S.A. Resita
According to the conditions laid down in Protocol 2 on European Coal and Steel
Community, Annex to the European Agreement establishing an association between
the European Communities and their Member States, on one hand, and Romania,
on the other**

THE COMPETITION COUNCIL,

Having in regard the provisions of the Competition Law no.21/1996, published in the Official Gazette, Part I, no. 88 of April 30, 1996, amended and completed by GEO no. 121/2003 approved by Law no. 184/2004,

Having in regard the provisions of the Law on State Aid no. 143/1999, published in the Official Gazette, Part I, no. 370 of 03.08.1999, amended and completed by Law no. 603/2003,

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,

Based on the following:

I. PROCEDURE OF NOTIFICATION

- (1) Under Note no. 17225/28.12.2004, registered at the Competition Council as no. RS-AS/113/29.12.2004, the Authority for State Assets Recovery (AVAS) notified, on the basis of article 6 of the Law no. 143/1999 on State aid with subsequent amendments and completions, the modification of the restructuring plan and of the existing aid, authorized by the Competition Council by Decision no. 124/13.04.2004, granted to S.C. CSR S.A. Resita. The notification became effective at 29.12.2004.

II. The Legal basis for granting the aid

- Law no. 137/2002 regarding some measures for accelerating privatization, with the subsequent modifications and completions;
- E.G.O. no 172/2001 regarding some measures for restoring the economic viability of Societății Comerciale "Combinatul Siderurgic Reșița" - S.A.
- E.G.O. no. 16/2004 for finalizing the privatization of Societății Comerciale "Combinatul Siderurgic Reșița" - S.A. Reșița;
- E.G.O. no 50/2004 for establishing some measures regarding the finalization of privatization of firms in difficulty.

III. Description of the Measure

III.1 Description of S.C. CSR S.A. Resita

(2) The State company, Combinatul Siderurgic Resita, has been set up in 1771 S.C. CSR S.A. Resita is a corporation, registered in the Register of Commerce by number J11/59/1991. In February 2004, the Company has been privatized, the Russian Group TMK through the Subsidiary Sinara Handel GmbH took over the shares. After the privatisation, the share capital of SC CSR SA Resita is ROL 2,151,505,775,000, divided in 86,060,231 shares with a rated value of ROL 25,000/stock.

(3) The shareholder's structure is the following:

Table no. 1

Shareholders	Nominal shares	% of the share capital
SINARA HANDEL	77,918,057	90.5390
Other shareholders	8,142,174	9.461
Total	86,060,230	100.000

Source: S.C. CSR S.A. Resita Business Plan & Privatisation Contract

(4) The object of activity of S.C. CSR S.A. Resita, according to the NCEA Code - 2710 is the manufacture of chalk, lime, coke, refractory products, steel products, spare parts, recovery and marketing of recyclable materials and execution of metallurgy repairs.

(5) The main activities, products/ services offered by S.C. CSR S.A. Resita are:

- The production of steel and rolled steel products for:
 - billets for pipes;
 - rolled steel products for S.N.C.F.R.;
 - Heavy sections and other half-finished products.
- The secondary object of activity: the extraction of chalk, lime production and refractory materials.

- (6) S.C. CSR S.A. Resita has also some auxiliary activities as the hydroelectric power plant which has 300 employees, the stone, lime and refractory materials quarry with 120 – 130 employees. The hydroelectric power plant supplies electricity for the Company and for the City; this plant has a strategic importance for the future development of the Company.
- (7) Currently, the productive equipment of S.C. CSR S.A. Resita is:
- **Electric furnace EBT type, 100 t/charge**, set in function in IV quarter of 1999 - minimum annual capacity of 450 thousand tones/year
 - **LF installation-ladle furnace** with processor and inert gas bubbling system, set in function in 2000
 - **Steel vacuum equipment**-investment 75% completed, completion depends on financial resources (about USD 4 mil)
 - **Continuous casting equipment**, round pipe billet- Ø250-280mm and bloom 260-340mm; the whole equipment is located inside the Company; mounting and construction works are 80% completed and stopped due to the lack of finance (about USD 5 millions)
 - **Billet and sections rolling mill (LDS)** – total capacity of 1050 thousand tones/year, out of which finished rolled pipe billets (pipe billets, heavy sections) 600 thousand tones/year and half-finished products 450 thousand tones/year. It holds deep ovens and uses steel ingots (670/620x2600mm-6.3t; 565/465x1550-3.2t) as raw materials
 - **800 rolling mill**-total capacity of 220 thousand tones/year out, of which finished rolled (round Ø90-160mm, U, I, rail 40-49 kg/meter, light rail section 120 thousand tones/year) and half-finished products (square pipe billet 40-140 mm, bloom 160mm) 100 thousand tons/year; has propulsion ovens and uses 250x250x600mm bloom from LDS rolling mill, as raw material;
 - **480 mm rolling mill** - total capacity 120 thousand tones/year (round 20-80mm, square 30-80mm, rectangular, hexagonal, narrow rail 13.75 and 15.5kg/meter, truck rim, light rail sections) has propulsion ovens and uses 160x160x300mm bloom from LDS rolling mill as raw material;
 - **280 mm rolling mill** - total capacity of 75 thousand tones/year (round Ø14-32mm, rectangular, square 14-30mm).It has propulsion ovens and it uses 70x70x4000 mm billet from the 800 mm rolling mill, as raw material;
 - **rim rolling mill** - total capacity of 41 thousand tones/year out of which 15 thousand tones/year rim and 26 thousand tones/year disks; it has a rotating oven and it uses 950 kg, 1t, 2t steel ingot, lathe cut.
- (8) The original steel works were unbalanced, with a significant excess steel-making capacity. This capacity has been progressively closed since 1990. The Siemens Martin steelmaking, capacities closed and permanently dismantled in 2000.
- (9) The plant has all the required licenses issued by authorized institutions.

III.2 Privatisation of S.C. CSR S.A. Resita

- (10) By the acquisition of the main share-stock, the Company was taken over by the American Company Noble Venture, in June 2000. The main shareholder was not able to revive the Company. CS Resita ceased its activity during the first quarter of 2001 and until the beginning of 2003 was closed down. As Noble Ventures did not respect the privatisation contract and in line with the privatisation contract stipulations, APAPS claimed back the ownership of the Company in January 2003.
- (11) Currently there is a lawsuit between Noble Venture and the Romanian State, in Washington. Regardless of the verdict, the Company won't be affected.
- (12) In these conditions, the privatization process was reprised. The privatisation process was carried out pursuant to the Law no. 137/2002 regarding some measures for accelerating privatisation
- (13) The advertisement was made in the Romanian and international newspapers on 28,10,2003.
- (14) The Presentation file has been brought to sell beginning with the date of 31,10,2003. The only buyer was Sinara Handel GmbH – Germany.
- (15) The deadline for submitting the final offers was provided in the advertisement as being 10,11,2003
- (16) At the deadline, only the offer of Sinara Handel GmbH was registered. The Negotiation Commission admitted the offer and began the negotiations. The negotiations aimed to harmonise the requirements of the privatisation commission with those of the potential investor, on the basis of the technical and financial offer submitted.
- (17) The Contract of Sale-Purchase of Shares was signed on 11,02,2004. The Romanian Government approved the share sale purchase agreement by Emergency Government Ordinance no. 16/April 2004.
- (18) The information submitted by the Authority for Privatization and Management of the State's Participations ("APAPS") (currently, the Authority for the State Asset Recovery ("AVAS")) leads to the conclusion that the privatization was carried out in a transparent and open way.

III.3 The Privatization Contract

- (19) The Shares Purchase Agreement between the Authority for Privatisation and Management of the State's Participations ("APAPS") and SINARA HANDEL GmbH Germany was concluded on February 11th, 2004 (the Privatisation Contract). The Agreement provides the acquisition of the controlling stake including 90.5390% of shares held by APAPS and additional shares resulting from the debt for equity swap performed in accordance with the Agreement. The principal terms of the Agreement are as it follows.
- (20) [...] ¹
- (21) *Representations and Warranties.* The Agreement provides for various representations and warranties regarding, *inter alia* the duly authorization and incorporation, no wind-up and bankruptcy, ownership rights, litigation, accounting records, financial statements, company's liabilities and employment issues.
- (22) *Seller's Covenants.* In the Agreement, the Romanian State agreed to provide the Purchaser with a number of covenants regarding the business operation and restructuring of S.C. CSR S.A. Resita, including the primarily conversion of certain debts of the Company into equity, exemption from payments of taxes and fees.
- (23) *Purchaser's Covenants.* In the Privatization Agreement, the Purchaser agreed to a number of covenants regarding the business operation of S.C. CSR S.A. Resita. The Purchaser also has agreed to provide substantial investments in the area of technology and environment protection and has undertaken a number of commitments regarding the employment and social policy.
- (24) Sinara Handel GmbH firmly undertakes to maintain for a period of 3 years from the closing date, a number of 1,520 employees, as existing in the Company upon the closing data, except for the situation when the Individual Labour Agreement terminates due to the culpability of the employee, to natural causes or due to causes not imputable to Sinara Handel GmbH. According to the Protocol attached to the Annex no. 6 of Share Purchase Agreement, Sinara Handel GmbH may perform collective dismissals only if the number of employees mentioned above increase as a consequence of final and binding Court decision for personnel reintegration due to causes prior to the closing date.

III.4 Overview of the Measures Granted to S.C. CSR S.A. Resita

- (25) S.C. CSR S.A. Resita benefited from the following measures in the context of its restructuring and return to viability:

Table no. 2

¹ Confidential data

Name of the measure	Valoarea Ajutorului 1993-1998	Amount of aid 1998 - 2002	Amount of aid 2003 - 2008	Total
Allotment for funds of re-technology and restructuring (in million ROL)	17,000			17,000
Quittance by conversion into shares of the State and utilities suppliers claims (in million ROL)		1,761,048		1,761,048
exemption from the payment of penalties and any other fees for late payment corresponding to the claims arisen through the share conversion accrued up to the conversion date (in million ROL)		1,675,690		1,675,690
Exemption from payment of debts (in million ROL)			482,375	482,375
Quittance by conversion into shares of the State claims (in million ROL)			770,915	770,915
Total (in million ROL)	17,000	3,436,738	1,253,290	4,707,028
Total (in USD)	4,900,000	118,259,454	37,822,034	160,981,488

Source: Authority for the Recovery of State Assets

IV. Description of the Relevant Market Description

(26) The measures granted to S.C. CSR S.A. may affect the following markets:

billets and blooms market;

hot rolled plates and strips market;

cold rolled plates and strips market;

galvanized plates and strips market;

IV.1 Domestic market

(27) Taking into account that the production activity of the Company was interrupted in 2002 because of the stranded privatization with Noble Ventures, the largest part of the client's portfolio has been lost. In March 2003, when the production activity was achieved with working capital finance from Petrotub Roman, the only client of CS Resita at that time.

IV.2 The external market

- (28) The company vanished from the market for 2 years so, this has led to closing the external commercial contracts. Because of the high operational costs, generated by lack of an installation of the continuous casting and the outdated rolling capacities, it resulted into vulnerable competitive position of the Company on the market.

IV.3 Product Sale Programme

- (29) The Sales Plan of the Company takes into account the stage of the investment programme and the commissioning dates of the individual investment items. Thus, until 2005, CS Resita assumes to produce only ingot cast and rolled blooms, billets and heavy sections. Similarly, the envisaged production is only 240 K tones in 2004 and 320 K tones in 2005.
- (30) According to the plans of TMK Group, CS Resita aims to reach an output of 450 K tones by 2006 and to maintain this output level in the period 2007 – 2010.
- (31) The future product portfolio of CS Resita will consist of blooms, billets for pipes and for re-rolling as well as heavy sections. As billets are assumed to account for over 90% of the total deliveries, CS Resita will be positioned as a supplier of half-finished steel products.
- (32) [...]²
- (33) [...]²
- (34) [...]²

Forecasted situation of the sales volume of SC CSR SA Resita during 2003-2008 (K tones)

Table no. 4
Total sales³

	(thousand tones)					
<i>Products</i>	2003	2004	2005	2006	2007	2008
Blooms	[...]	[...]	[...]	[...]	[...]	[...]

² Confidential data

³ Confidential data

Billets	[...]	[...]	[...]	[...]	[...]	[...]
Heavy sections	[...]	[...]	[...]	[...]	[...]	[...]
Total	[...]	[...]	[...]	[...]	[...]	[...]

Table 4a Domestic sales³

	Thousand tones					
<i>Products</i>	2003	2004	2005	2006	2007	2008
Blooms	[...]	[...]	[...]	[...]	[...]	[...]
Billets	[...]	[...]	[...]	[...]	[...]	[...]
Heavy sections	[...]	[...]	[...]	[...]	[...]	[...]
Total	[...]	[...]	[...]	[...]	[...]	[...]

Table 4b Export sales³

	Thousand tones					
<i>Products</i>	2003	2004	2005	2006	2007	2008
Blooms	[...]	[...]	[...]	[...]	[...]	[...]
Billets	[...]	[...]	[...]	[...]	[...]	[...]
Heavy sections	[...]	[...]	[...]	[...]	[...]	[...]
Total	[...]	[...]	[...]	[...]	[...]	[...]

Source: S.C. CSR S.A. Resita Business Plan

- (35) The market share on the steel market was determined and approved in the context of the whole Romanian steel sector restructuring, so S.C. CSR S.A. has its own delimited market share.
- (36) If in 1989, the market share on the steel market was occupied in a 5.5% quota by CSR, this segment represented in 2002, 0%. The Restructuring and Viability Plan for CSR, develops a steel production capacity of 476,000 tones in 2010, respectively 5.4%.
- (37) All these market shares are related to the whole Romanian Steel Sector Restructuring Plan, elaborated by the Ministry of Economy and Commerce and checked by the European Union's advocacy – Roland Berger.
- (38) The competitors represent undertakings from the Romanian steel sectors that are equally and unitarily treated in the context of the restructuring strategy in Romania, according to Protocol 2.

V. The Restructuring Plan

V.1 Introduction

- (39) Following the negotiations with the Romanian State up the sale-purchase of the majority share-package, Sinara Handel GmbH has committed to perform development investments in amount of USD 5,050,000, out of any other investments from its own sources consisting of cash amounts transferred to the

Company by the Purchaser, in its name and on its account. The Purchaser also commits to make available to the Company, upon the closing date, a working capital of USD 6,000,000, out of which USD 4,500,000 until the end of the first investment year and USD 1,500,000 in the second investment year. Sinara Handel GmbH has committed to invest USD 3,030,000 for the environment protection over a period of five years.

- (40) After the completion of the privatisation process, significant changes took place in the business practice of the Company by means of the overall investments for production technology, for the period from 2004 to 2008 amounting USD 16.6 million.

V.2 The Technical and Technological Restructuring

- (41) The Technological Investments Plan contains investments assumed by Sinara Handel GmbH by the Shares Purchase Agreement and by Business Plan.

Investment Plan assumed by Sinara Handel GmbH at CS Resita during 2004 - 2008⁴

Table no. 5

UM = USD million						
Investment objectives	2004	2005	2006	2007	2008	TOTAL
[...]	[...]	[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]	[...]	[...]
TOTAL						[...]

Source: Individual Business Plan of S.C. CSR S.A Resita

- (42) The investment projects for the period of 2004 – 2008 is performed by the own sources of the company. The costs of the investments project are USD 16.6 million.
- (43) The effects envisaged by CSR Resita after the accomplishment of the technological investment are:
- The measure with the highest impact on costs is the installation of the continuous caster. The continuous caster will help CS Resita to improve its metallic yield, cut rolling costs and reduce the energy consumption.

⁴ Confidential data

- The modernization of the burners from the EAF will increase productivity through reducing tap-to-tap time also enabling a lower energy input steel making.
- The investment in rolling mill equipment is necessary but it is logically postponed until the Company is supposed to be able to produce efficiently high quality liquid steel.

V.3 The Environment Protection Program

- (44) The total amount of investments required for the environment compliance as modified in the Viability Plan in 2004 is estimated to USD 9.7 million
- (45) According to the privatization agreement, Sinara Handel GmbH. must invest USD 3 million in the environment protection projects at CSR S.A Resita. In addition, S.C. CSR Resita will invest USD 6 million starting with year 2005 from the own resources. The total amount of environment protection investment costs are USD 9.7 millions.

V.4 The Organizational and Ownership Restructuring

- (46) After a failed privatisation, CS Resita returned to the State ownership, and was re-privatised on the 17th of February 2004, with Sinara TMK. After the suspension period of the transferred property, organizational changes are expected from the main shareholder, adapted to the Group's Strategy.

V.5 Financial Restructuring

- (47) The financial restructuring comprises a series of measures concerning the historical debts of S.C. CSR S.A. Resita, mainly the erase of penalties and other fees for late payment or for the failure to pay the debts in due time to the State budget. An important part of the accrued penalties correspond to the production capacities which were closed between 1990 and 2000.
- (48) The debts corresponding to the production capacities which were closed are reflected in the balance sheets of the Company between 1994 and 2000 and led to the increase of the debts of the Company. The Romanian Companies have not initiated an immediate financial restructuring, which led to the difficult economic-financial situation in 2001. The penalties and other fees for late payment have continued to rise up to the moment of the transfer of ownership to Sinara Handel GmbH, when they were either erased or converted into shares.

- (49) The Company was privatized in 2000, the acquirer being Noble Ventures Inc. – USA, which bought 94.5% of C.S. Resita. The privatisation has failed as the buyer did not meet the Privatisation Contract clauses.
- (50) The financial situation of the Company has been deteriorated in 2000 and, starting with the beginning of 2001, only a part of the Company remained operational. This is reflected in the decrees of the turnover between 2000 and 2002. Anyway, the direct and indirect expenditures didn't suffer the same rate of decrease, so the Company has registered negative results. These can be explained, largely, by the fact that all the employees have been kept, thus C.S.R. Resita incurred large labour expenses.
- (51) The high amount of expenditures, as it is shown in the Profit/Loss Account it is due to the penalties and to other fees for late payment recognized by the Company. Between 1999 and 2001, the commercial debts and the liabilities increased because the Company had not paid the suppliers and other taxes, which caused a big amount of penalties and fees for late payment. The financial restructuring of the Company decreases the Other Current Liabilities account in 2004. In addition to this, the debts that CS Resita owes to Electrica (the electricity provider) and Distrigaz (the natural gas provider) were swapped into equity. This decreased the Payable Accounts and this is reflected in a new equity issue.
- (52) The financial restructuring has involved the following measures:
- exemption from the payment of penalties and other fees for late payment in the amount on the date of issuing the budgetary liabilities certificates by the creditor;
 - conversion into shares of the debts of S.C. CSR S.A. Resita to SC Electrica Banat SA, SC Distrigaz Nord SA Targu Mures, S.N. CFR S.A., SC Caile Ferate Romane Marfa SA, which were eligible at the closure date;
 - conversion into shares of the budgetary claims of the Ministry of Public Finances, Ministry of Labour and Social Solidarity and of the National House of Health Insurance;
 - Conversion into shares of State claims consisting of sums paid by the Ministry of Public Finances, as a guarantor, of the lending banks, in the account of the loans contracted by S.C. CSR S.A. Resita and guaranteed by the State, of the corresponding interests and commissions, as well as the commission owned to the risk fund.

V.6. The reduction of capacities

- (53) In 1989, in Romania, the production capacities reached about 18 million tones /year. Beginning with 1990 the steel production started to decline, due to the low domestic demand of metal. In 1993 the Romanian steel industry had a capacity of 17.4 million tones of steel a year. In 2003 the capacity is about 9.4 tones of

steel/year. During 1993-2003, at national level the rolling capacities closed, their level reaching from 26,497,000 tones to 15,406,000 tones.

- (54) For S.C. CSR S.A. the level of steelmaking and rolling capacities are the following:

The evolution of the steel production capacities

Table no. 6

UM = thousands tones				
Steel making	1993 – projected capacity	1993-2003 Modifications	2003 – projected capacity	2008- projected capacity
Siemens Martin Steelmaking	1050	- 1050	0	0
Electrical Steelmaking	0	+ 450	450	450
Total	1050	- 600	450	450

Table no. 7

UM = thousands tones					
Section	1993 - projected capacity	1993 – 2003 Modifications	2003 projected capacity	2003 – 2008 Modifications	2008 – projected capacity
Blooms	1050	0	1050	0	1050
Heavy profiles	220	0	220	- 220	0
Middle and special profiles	120	0	120	- 120	0
Light profiles	80	- 80	0	0	0
Rail, wheels CF	41	- 41	0	0	0
Total	1511	- 121	1390	- 340	1050

Source: Annex to the Strategy of Restructuring the Romanian Steel Industry for the period 2004 – 2008

V.7 Restructuring costs, financing sources and the envisaged financial situation

- (55) The restructuring costs include the technological investment cost, the environment protection investment cost, the employment restructuring cost and the financial restructuring cost.

V.7.1 Financial Restructuring Costs

Table no. 8

Financial Measures	2001	2002 - 2003	2004	2005 - 2008	Total	Financing Source
Conversion into shares (ROL million)	1,761,048	-	770,915	-	2,531,963	State aid

Debts erased (ROL million)	1,675,690	-	482,375	-	2,158,065	State aid
TOTAL(ROL million)	3,436,738	-	1,253,290	-	4,690,028	State aid
TOTAL (USD)	118,259,454	-	37,822,034	-	156,081,488	State aid

Source: The Authority for the Recovery of the State Assets

V.7.2 The Technological Restructuring Costs

- (56) The cost of the Investments Project is USD 16.6 million, during the period 2004 – 2008. By the Shares Purchase Agreement, the new investor, Sinara Handel GmbH assumed that it will realize Technological Investment Projects with a total of USD 5,050,000. The other investment projects will be made by S.C. CSR Resita with the own sources. The total value of the Technological Investment Project is USD 16.6 million.

V.7.3 The Environment Restructuring Costs

- (57) The environment protection investment, in amount of USD 9,700,000, will be performed from the own sources of the Company.

The costs of the investments for environment protection

Table no. 9

Year	USD Million
2004	0.14
2005	3
2006	2.56
2007	1.5
2008	2.5
TOTAL	9.7

Source: Individual Business Plan of S.C. CSR S.A. Resita

V.7.4 The Total Restructuring Costs

- (58) The total gross cost of the restructuring made from the technological investment cost, environment protection investment cost, social cost, working capital and financial restructuring cost is in amount of USD 188.4 million, out of which the own contribution of the Company is of USD 32.3 million.

Table no. 10

Measure	Costs of the measures (USD Million)
Technological Investments	16.6
Environment	9.7

protection investments	
Working capital	6
Write off the debts	70.44
Conversion into shares of old debts	85.64
Total	188.37

VI. Assessment of the Measures

- (59) Under the EA, Romania has undertaken to respect certain rules as regards the granting of State Aid to undertakings operating in Romania. The Competition Council must assess the aid granted in light of national law and Romania's obligations under the EA, which entitle Romania to grant State aid to the steel industry for restructuring purposes up to the date of accession, provided certain conditions are met. It is useful for the Competition Council to consider the *acquis communautaire* applicable to the State aid under consideration, bearing in mind the particular situation of the steel industry and the change in EC law applicable to the steel sector due to the expiry of the ECSC Treaty in 2002.

VI.1 The State aid within the meaning of State aid Law

- (60) According to Article 2 of the State aid law no. 143/1999, with the subsequent amendments and completions any measure of support granted by the state or the local administrative authorities, from state resources or local administrative authorities' resources, regardless of its form, that distorts or threatens to distort competition, by favoring certain undertakings, the production of certain goods, the provision of some services or affects the commerce between Romania and the EU Member States, being considered incompatible with a normal competitive environment.
- (61) By GEO no. 172/2001, the Romanian Government approved a couple of different obligations in the Privatisation Agreement with Noble Ventures suspect to contain elements of State aid. These obligations included the conversion of the public claims into shares to be sold to Noble Ventures, facilities granted by the Ministry of Public Finances concerning the external loans contracted by the Company with the guarantee of the State.
- (62) The total value of the State's contributions under the First Privatisation Agreement, thus amount to ROL 3,436,738 million.
- (63) In return, Noble Ventures was obliged to pay to the State USD 4,515,780 as the purchase price for the acquired shares.
- (64) The package was financed by State resources and undoubtedly meets the selectivity criteria as it was granted to a single company. It also has a potential

impact on competition and trade, since the company's products are traded between Romania and the European Union and the company competes with other European companies.

- (65) Noble Ventures failed to comply with the contract's clauses, so the Authority for Privatization and Management of the State's Participations denied the Privatization Contract and it became again the main shareholder of the Company. In this condition, the restructuring of S.C. CSR S.A. Resita was delayed until APAPS would have been able to find a new investor. Due to this situation, the Company accumulated more losses, so it was necessary that, under a new privatization agreement, new facilities to be granted by the Government.
- (66) By GEO no 16/2004, new financial measures for S.C. CSR S.A. Resita were approved, as a consequence of signing a new Privatisation Contract with Sinara Handel GmbH.
- (67) The total value of the State's financial contribution to the Privatisation Agreement was in amount of ROL 1,253,290 million.
- (68) [...] ⁵
- (69) In the present case, there are no indications that – in the case of CSR Resita's liquidation – the company had to bear higher costs than under the Privatization Agreement. In the light of these considerations, the whole package of the State's financial obligations under the Privatization Agreement must be regarded as State aid within the meaning of Article 2 of the State aid Law no 143/1999, with the subsequent amendments and completions.

VI.2. The Compatibility assessment

- (70) In assessing the compatibility of the State aid, the Competition Council has to evaluate whether the measures are compatible with a normal competitive environment in accordance with the provisions of Article 2 paragraph (2) and (3) of the Law and with the applicable Acquis as agreed upon in the European Agreement. It must therefore assess whether the measures are covered by one of the exemptions to the general prohibition of the State aid.
- (71) The criteria applicable to the State aid for the steel sector are laid down in Protocol 2 on ECSC products, Annex to the European Agreement establishing an association between the European Communities and the Member States thereof on one hand, and Romania, on the other hand.
- (72) The State aid granted under the GEO no. 172/2001 and under the GEO no. 16/2004 aims to facilitate the restructuring of S.C. CSR S.A. Resita. According to Article 9 of Protocol 2, restructuring aid may be approved if it strictly fulfils the criteria

⁵ Confidential data

and if it is certain that the advantages that result out of the survival of the undertaking will compensate for any distortion of competition, especially if the net effect of the collective redundancies, as a consequence of the companies' bankruptcy, combined with the effects it can have up on the suppliers, would exacerbate the unemployment problems at national level.

- (73) In accordance with the provisions of Article 9 (4) Protocol 2 on ECSC products in connection with the relevant guidelines on aid for the Rescue and Restructuring of firms in difficulty, Romania can grant Restructuring aid to Steel companies if :
- a. the firm is in economic difficulty;
 - b. the implementation of the restructuring plan leads to the viability of the company under normal market conditions at the end of the restructuring period;
 - c. the value and the intensity of the State aid is strictly limited to the minimum necessary to restore the viability; and
 - d. the aid is progressively reduced.
- (74) Moreover, the restructuring programme must be linked to a rational globalization and reduction of the production capacity in Romania.

VI.2.1 Firm in Difficulty

- (75) According to *the Regulation on State aid for rescuing and restructuring firms in difficulty*, a firm is in difficulty if it is unable to stem losses which, without outside intervention by the public authorities, will almost certainly condemn it to go out of business in the short or medium term. The usual signs of a firm being in difficulty are increasing losses, diminishing turnover, growing stock inventories, excess capacity, declining cash flow, mounting debt, rising interest charges and falling or nil net asset value. In acute cases the company may already have become insolvent or may be the subject of collective insolvency proceedings brought under its domestic law.
- (76) Since 1998 up to February 2004, the moment of privatization, S.C. CSR S.A. Resita used to be a company that was encountering severe financial difficulties.
- (77) Following a cyclic decline that occurred in the beginning of the year 1999, mostly due to the Asian crisis in 1997, the sector of the steel industry encountered a dramatic change in matters of demand and price at the end of the year 1999 and in the year 2000 that affected the financial situation of the Company.
- (78) In the moment of privatization, the economic situation of S.C. CSR S.A. Resita was very difficult, the loss registered in the last 3 years overcame the equity capital with 22% and in 2002 was of 30%. According to the independent auditors report, the Company has registered losses of ROL 320,452,976 thousand during the financial exercise closed on the 31st of December 2002. This situation shows

the existence of a serious uncertainty regarding the possibility of the Company to continue the activity.

Table no. 11

Profit(+)/losses(-) (thousand ROL)		
2000	2001	2002
- 675,208,753	- 1,633,484,838	- 320,452,976
Profit(+)/losses(-) (thousand ROL)		
2000	2001	2002
- 31,126	- 56,209	- 9,694

Source: The Balance Sheets

- (79) The Company was not capable to renegotiate its loans from the banks and it was not able to reimburse the budgetary debts. According to the independent auditors report, the Company wouldn't have been able to continue its activity without an important financial support.
- (80) Analyzing the main indicator, the turnover, it is easy to notice that the Company has a substantial decrease in 2001 compared to 2000, and in 2002 compared to 2001.

Table no. 12

Turnover (thousands ROL)		
2000	2001	2002
601,058,571	309,418,643	48,602,151
Turnover (thousands USD)		
2000	2001	2002
27,708	10,647	1470

Source: The Balance Sheets

- (81) Moreover, the situation of the Company deteriorated in 2000 and, beginning with the 1st quarter of 2001, only a part of the Company was functioning. This can be seen in the decrease of sales figures between 2000 and 2002. However, COGS and SGA's did not decrease at the same rate, leading to negative results. These can be explained, largely, by the fact that all the employees have been kept, thus C.S. Resita incurred large labors expenses. The large Other Expenses in 2001 are owed to the recognition of the penalties and delay increases through the Income Statement.
- (82) Losing the registered capital, increasing losses, increasing stock inventories, amounting total debts, amounting of the percentage of debts owed to the State budget within the total amount of debts, rising the interest charges as revealed by the economic analysis hereinbefore presented, reflect the concept of a firm in

difficulty, eligibility criteria provided in the Regulation on State aid for rescuing and restructuring firms in difficulty.

Table no. 13 The evolution of the main economic and financial indicators

	1999 USD	2000 USD	2001 USD	2002 USD
Cash and cash equivalents	11,597	51,914	93,710	135,350
Accounts receivable	8,073,163	7,062,990	5,498,291	4,107,418
Inventories	13,791,885	10,809,328	20,075,001	21,128,644
Prepaid expenses	192,988	359,058	101,449	68,631
Total current assets	22,069,633	18,283,290	25,768,451	25,440,044
Gross property, plant and equipment	37,121,693	32,219,427	24,183,732	33,933,344
Accumulated depreciation	0	1,058,259	3,151,008	4,661,734
Net Property, Plant and Equipment	37,121,693	31,161,167	21,032,724	29,271,610
Investments	3,923	2,377	2,429	1,889
Other assets	174	97	58	35
TOTAL ASSETS	59,195,424	49,446,931	46,803,662	54,713,578
Accounts payable	13,889,939	15,511,204	25,176,550	5,810,090
Short Term Debt	1,237,918	896,754	893,545	813,757
Dividends payable	0	0	0	0
Other current liabilities	22,576,890	39,333,515	70,255,180	10,984,598
Total current liabilities	37,704,748	55,741,473	96,325,275	17,608,445
Long-term debt	22,685,218	17,983,746	12,584,376	7,585,502
Other Long-Term Liabilities	14,791,337	15,597,520	19,090,012	6,080,993
Total non-current liabilities	37,476,555	33,581,265	31,674,388	13,666,495
Shareholders' Equity	(15,985,879)	(39,875,807)	(81,196,000)	23,438,638
TOTAL LIABILITIES AND EQUITY	59,195,424	49,446,931	46,803,663	54,713,577

(83) Considering the evolution of the main economic-financial indicators registered during 1998-2001, the following can be observed:

- a. The Company's losses increased;
- b. Between 1999 and 2001, the Accounts Payable and Other Current Liabilities accounts increased as the Company did not pay its suppliers and taxes, accumulating penalties and delay increases.

VI.2.2 The Restoration of viability

- (84) As provided by Article 9(4) in Protocol 2 on ECSC products, as well as by Article 12 paragraph (3) from the Regulation on State aid for rescuing and restructuring firms in difficulty, the implementation of the measures contained by the Restructuring Plan must ensure the long-term viability to the firm and the functioning on its own resources. The fulfilment of the viability criteria represents an essential element in the assessment of the Competition Council on the compatibility of the State aid with a normal competitive environment.
- (85) Considering that the steel sector represents a sensitive sector within the European economy and taking into account the experience of EU in restructuring the steel sector, the analysis on the restructuring of the undertaking's viability of the Competition Council was based on the viability test of the European Commission.
- (86) The main viability indicators (criteria) are the following:
V₁ – gross operating margin;
V₂ – gross profit ratio.
- (87) At the end of the restructuring period, the viability indicators for S.C. CSR S.A. Resita must reach the following values:
V₁ must represent 10% times more the revenue obtained from selling steel products;
V₂ must be 1,5% times more the revenue obtained from selling steel products.
- (88) In order to analyze the viability indicators in the European Commission Test, the Company made a 5-year forecast of the evolution of the Income Statement, the Balance Sheet and the Cash Flow, based on the current prices. This meant:
- The forecast of revenues based on the selling price and the production volume estimated in the context of potential development of the steel international market;
 - The estimation of operational costs by applying different inflation rates for materials, energy and fixed costs.
- (89) In the first set of financial forecasts, the application of the viability test is based on the revenues and costs of the undertaking. The costs and revenues taken into account are those afferent to the metallurgic production. The turnover is the one resulted from the revenues collected from the steel product sale.

Table no. 14 The forecast of the Income Statement for a 5 year period based on current prices⁶

USD Millions	2004	2005	2006	2007	2008
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⁶ Confidential data

Turnover, out of which: - Steel sales revenues	[...]	[...]	[...]	[...]	[...]
Variable Costs					
Gross profit					
Fixed costs	[...]	[...]	[...]	[...]	[...]
EBITDA					
Depreciation/ Amortization	[...]	[...]	[...]	[...]	[...]
Operating profit					
For exchange income/expense					
Profit/(Loss)	[...]	[...]	[...]	[...]	[...]
Financial Revenue					
Financial charges					
%/sales					
Pre-tax profit	[...]	[...]	[...]	[...]	[...]
Tax					
Net Profit	[...]	[...]	[...]	[...]	[...]

Source: Individual Business Plan of S.C. CSR S.A. Resita

(90) The application of the Viability Test of the European Commission implies the checking of the following indicators:

- the level of depreciation/amortization (which has to represent minimum 5% steel sales revenue);
- the level of financial charges(which has to represent minimum 3.5% of steel sales revenue).

(91) The data presented hereinbefore led to the following situations, in matters regarding the depreciation and level of financial charges:

The situation of the depreciation/amortization level⁶

Table no. 15

USD Million	2004	2005	2006	2007	2008
Turnover	[...]	[...]	[...]	[...]	[...]
Depreciation	[...]	[...]	[...]	[...]	[...]
% of the Turnover before adjustment	[...]	[...]	[...]	[...]	[...]
% of the Turnover (minimum necessary)	[...]	[...]	[...]	[...]	[...]

Source: Competition Council calculation based on the Business Plan

The situation of the level of financial charges⁷

Table no. 16

USD Millions	2004	2005	2006	2007	2008
Turnover	[...]	[...]	[...]	[...]	[...]
Forecasted financial charges	[...]	[...]	[...]	[...]	[...]
% of the Turnover before adjustment	[...]	[...]	[...]	[...]	[...]
% of the Turnover (minimum necessary)	[...]	[...]	[...]	[...]	[...]

Source: Competition Council calculation based on the Business Plan

- (92) The data presented in Table no. 15 and 16, following the forecasts for 5 years, led to the conclusion that the undertaking does not fulfil the two criteria necessary for the application of the Viability Test. So, in the first stage, a second set of financial estimations is necessary, by applying the special accounting conditions to the first set of financial forecasts. These special accounting conditions include minimum levels of tax and depreciation, expressed as a percentage of the steel sale revenues and the obligations related to charges.

The situation of the depreciation/amortization level after the adjustment according to the special accounting conditions⁷

Table no. 17

USD Millions	2004	2005	2006	2007	2008
Turnover	[...]	[...]	[...]	[...]	[...]
Necessary Surplus	[...]	[...]	[...]	[...]	[...]
Adjusted depreciation	[...]	[...]	[...]	[...]	[...]
% of the Turnover after adjustment	[...]	[...]	[...]	[...]	[...]
% of the Turnover after	[...]	[...]	[...]	[...]	[...]

⁷ Confidential data

adjustment (minimum necessary)					
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Source: Competition Council calculation based on the Business Plan

The situation of the financial charges after the adjustment according to the special accounting conditions ⁸

Table no. 18

USD Millions	2004	2005	2006	2007	2008
Turnover	[...]	[...]	[...]	[...]	[...]
Necessary Surplus	[...]	[...]	[...]	[...]	[...]
Adjusted financial charges	[...]	[...]	[...]	[...]	[...]
% of the Turnover after adjustment	[...]	[...]	[...]	[...]	[...]
% of the Turnover after adjustment (minimum necessary)	[...]	[...]	[...]	[...]	[...]

Source: Competition Council calculation based on the Business Plan

- (93) Following, the application of the special accounting conditions, the amount of steel sales revenues must be diminished every year by a percentage of 1.25%, equivalent with the multiplication of the amount of revenues by 0.9875.
- (94) The fixed costs, variable costs and depreciation are increased every year with a percentage of 1.25%, equivalent with the multiplication of the amount of every type of cost and depreciation by $1.0125(1 - 1.25\% \cdot 1 = 0.9875)$.
- (95) After the diminishing of revenues and increase of costs and depreciation, the forecasted situation is the following:

Table no. 19 The forecasted situation of profit and loss for a 5 year period reported to the current prices after operating adjustments regarding the depreciation, financial charges, costs and incomes⁹

⁸ Confidential data

⁹ Confidential data

USD Million	%	2004	2005	2006	2007	2008
Turnover. out of which:	-1.25	[...]	[...]	[...]	[...]	[...]
- Steel sales revenues						
Variable Costs	+ 1.25					
Depreciation/sales	+ 1.25	[...]	[...]	[...]	[...]	[...]
Financial charges/sales	+ 1.25	[...]	[...]	[...]	[...]	[...]
EBIT		[...]	[...]	[...]	[...]	[...]

Source: Competition Council calculation based on the Business Plan

(96) After the application of the accounting special conditions and the calculation of margin price/cost, the two viability indicators can be determined:

V_1 (gross operating margin) = Marginal costs/ (steel sale revenue)

V_2 (gross profit ratio) = (Pre-tax profit + Financial charges)/ (steel sale revenue)

Table no. 20

%	2004	2005	2006	2007	2008	Target
V_1 (gross operating margin)	-13.0	-7.9	12.2	9.0	10.7	10
V_2 (gross profit ratio)	-21.6	-16.5	3.6	0.4	2.1	1.5

Source: Competition Council calculation based on the Business Plan

(97) The Competition Council notes that at the end of the assessed period (2004 - 2008) the undertaking fulfils the viability criteria set by the European Commission.

VI.2.3 The value and intensity of the Aid limited to the minimum necessary

The minimum value of the aid

(98) According to the provisions of Protocol 2 on ECSC products, as well as those of the Regulation on State aid for rescuing and restructuring firms in difficulty, the

State aid should be limited to the minimum necessary in order to allow the restructuring according to the financial resources of the undertaking or of the shareholders. The level of State aid should be strictly limited up to level of fulfilling the objectives of the Restructuring Plan.

- (99) Sinara Handel GmbH has conditioned the acquisition of the shares package by the compensation of the old losses of S.C. CSR S.A. Resita.
- (100) Given the shattered financial situation of the Company, the only way to keep it on the market was to privatize it. However, it was clear that no private investor would acquire the Company without the State's participation in its financial restructuring. In order to achieve the best possible purchase price, i.e. to privatise the Company with as less State contribution as possible, the Romanian Government carried out a transparent and open tender procedure. The privatisation project was announced in regional, national and international newspapers on 28,10,2003. As the deadline, only the offer of Sinara Handel GmbH was registered. The Negotiation Commission admitted the offer and began the negotiations. Following, the negotiations between the State and Sinara Handel GmbH took place, being concluded by signing the Contract of Sale-Purchase of Shares on the 11th of February 2004. The Romanian authorities granted the State Aid to S.C. CSR S.A Resita in the form of erased debts and the State Company debt-equity swaps in an amount of USD 156,081,488. A sale only on the basis of the offers in the tender would not be possible, as the value of a company is, contrary to a sale of buildings, not static. Therefore negotiations had to take place. As the best and only offer was accepted, the price paid by Sinara Handel GmbH should normally be considered the market price, and thus the offer requesting the minimum of State aid necessary for the restructuring.
- (101) Moreover, on the basis of the relevant facts, The Competition Council concludes that the State aid granted is limited to the minimum necessary because the Company is relieved from paying the historical debts. The State aid allows the Company to be eligible for credits. It results that, by granting this aid, no supplementary liquidities has been granted, so it is necessary for Company and the new investor to develop a minimum investment programme in order to reach the viability parameters.

The intensity of the aid

- (102) The criterion of the intensity of the aid requires an examination of whether the minimum necessary aid is still too high, i.e. the State' participation is too large to be considered proportional and therefore cannot be justified, even if this means that the company concerned may not be restructured at all.
- (103) The intensity of the nominal restructuring aid is 83% (USD 160.98 million /USD 193.27 million). The Competition Council takes the view that in the special

circumstances of this restructuring case, this is an appropriate level of State aid intensity.

VI.2.4 No undue distortion of Competition – compensatory measures

- (104) The compulsory limitation or reduction of the Company's presence on the relevant market represents a compensatory factor in favour of its competitors. It should be in proportion to the distortive effects of the aid and, in particular, to the relative importance of the firm on its market or markets.
- (105) According to the article 13 of the Regulation on rescue and restructuring aid for firms in difficulties, the State aid grantor has to take compensatory measures for diminishing the negative effects of the competition on relevant market
- (106) The Competition Council assessed the closing and dismembering of capacities in S.C. CSR S.A. Resita case and concludes that by closing 1050 thousand capacities of steelmaking which had been dismembered in the years 1995 - 2000, the negative effects which arise from the granting of the aid have been compensated.

Table no. 21

Nr crt.	Name of capacities	Capacity closed (thousand tones/year)	The year/period	
			Closing	Dismembering
1	Coke plant	- 650	1993-1996	1996 - 2000
2	Sintering installations		1992	1993 -1997
3	Furnace	- 800	1991	1995 -2005
4	Siemens Martin Steelmaking	- 1050	1992 - 1999	1995 - 2000
5	Heavy profile and half-finished rolling mill	- 220	2006	2007
6	Easy profile	- 80	2000	2003 -2005
7.	CF products rolling mill	- 41	2005	2006
8.	Special profile rolling	- 120	2005	2006
	Total			
	• coke plant	- 650		
	• furnace	- 800		
	• steelmaking	- 1050		
	• rolling (including half-finished products)	- 461		

Source: Annex to the Strategy of Restructuring the Romanian Steel Industry for the period 2004 – 2008

- (107) The Restructuring Programme leads to the rationalization and reduction of the capacities of S.C. CSR S.A. Resita, the effect of distortion of competition being compensated in this way.

VI.2.5 The progressive reduction of the aid

Table no. 22

UM = USD

Year	1993	1994	1995	1996	1997	1998	1999	2000
State aid granted (gross value)	-	-	2,500,000	1,300,000	1,100,000	-	-	-
Year	2001	2002	2003	2004	2005	2006	2007	2008
State aid granted (gross value)	118,259,454	-	37,822,034	-	-	-	-	-

(108) As shown in the table no. 22, the State aid will be progressively reduced. The high amount of money granted in 2001 is owed to the delayed privatization. When the American Company Noble Ventures failed to fulfil its commitments under the agreement, APAPS denied the Contract and the Romanian State became the owner of the Company. So the necessity to grant an additional aid for restructuring purposes arose.

VII. Annual monitoring and reporting

(109) According to article 17 of the Regulation on State aid for rescuing and restructuring firms in difficulty, the Competition Council continuously monitors the implementation manner of the Restructuring Plan, so that it would not divagate from the accomplishment of the Restructuring Plan's objectives. Any modification of the Restructuring Plan or of the State aid's quantum must be notified, for re-assessing the granting conditions for the State aid.

VIII. Conclusions

(110) Taking into account the above presented, the Competition Council concludes the following:

1) The financial measures taken by the Romanian authorities in order to restructure S.C. CSR S.A. Resita constitute aid in accordance with the Law no. 143/1999 on State aid, with the subsequent amendments and completions.

2) The State aids granted for S.C. CSR S.A. Resita meet the authorization criteria established in the Protocol 2 regarding the CECO products, Annex to the European Agreement establishing an association between Romania, on one hand, and the European Communities and their Member States, on the other hand, so they are compatible with the normal competitive environment.

DECIDES

Art. 1. According to paragraph (1) and (2) of Article 12 of Law No. 143/1999 on the State Aid, with the subsequent modifications and completions, authorizes the modification of the State aid authorized by the Competition Council by Decision no. 124/13.04.2004, granted to SC CSR SA Resita. Also, by this decision it is authorized the State aid granted to SC CSR SA Resita during the period 1993-2001, in amount of ROL 3,453,738 million (USD 123.159 million).

Art. 2. The total amount of State aid authorized by this decision in benefit of SC CSR SA Resita during the period 1993-2004 is of ROL 4,707 billion (USD 160.98 million).

Art. 3. This Decision shall be applicable as of the date it is communicated.

Art. 4. According to the provisions of Article 29 of Law No. 143/1999 on the State aid, as amended, this Decision may be challenged by the interested parties at the Court of Appeal Bucharest, Administrative Litigation Section, within thirty days of the date of its communication.

Art. 5. This Decision shall be notified by the Secretariat General of the Competition Council to:

- Authority for State Assets Recovery, str. Cpt. Av. Alexandru Serbanescu, nr. 50 sector 1;
- S.C. CSR S.A. Resita, strada Traian Lalescu, nr. 36, Resita, Jud. Caras-Severin.

Art. 6. The General Secretariate and the Direction for State aid Authorization will follow the enforcement of this decision.

PRESIDENT

MIHAI BERINDE