

DECISION No. 339

Of 31.12.2004

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

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. 17184/27.12.2004, registered at the Competition Council as no. RS-AS/112/29.12.2004, 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. 115/06.04.2004, granted to S.C. Siderurgica S.A. Hunedoara. 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 116/2003 for privatization of S.C. SIDERURGICA SA Hunedoara, approved by Law no. 270/2004;
- 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. SIDERURGICA SA Hunedoara

- (2) S.C. SIDERURGICA S.A. Hunedoara was established in 1882 and was nationalized in June 1948. S.C. SIDERURGICA S.A. Hunedoara became a share company legally constituted according to the Romanian law, in 1991.
- (3) S.C. SIDERURGICA S.A. Hunedoara was bought by LNM Holdings NV Netherlands. The Company had a registered capital of ROL 942,078,375 thousand split in 37,683,135 shares of ROL 25,000 each.
- (4) Before signing the Sell-Buy Shares Contract, the structure of the shareholders of SIDERURGICA Hunedoara was the following one:

Table no. 1. Structure of the shareholders before privatization

SHAREHOLDERS	HOLDS OF CAPITAL	
	Number of shares	Percentage of registered capital (%)
APAPS	30,492,217	80.9174%
SIF Banat Crisana	5,921,224	15.7132%
Other shareholders	1,269,694	3.3694%
TOTAL	37,683,135	100.000

Source: AVAS

- (5) After fulfilling the ownership transfer of the sold shares, the structure of the shareholders is as it follows:

Table no. 2. Structure of the shareholders after privatization

SHAREHOLDERS	HOLDS OF CAPITAL	
	Number of shares	Percentage of registered capital (%)
LNM Holdings N.V.	30,492,217	80.9174%
SIF Banat Crisana	5,921,224	15.7132%
Other shareholders	1,269,694	3.3694%
TOTAL	37,683,135	100.000

Source: AVAS

III.1.1 The object activity of S.C. SIDERURGICA

- (6) *The basic activity objective* of S.C. SIDERURGICA, according to CAEN code 2710, is the manufacture and marketing of alloyed and unalloyed steel products, under the following forms:
 - Continuous cast-on billets, heat laminated shapes: small, medium-sized, heavy and special;

- Heat laminated metal bars: rounded, flat, square, wide;
 - Laminated wire and concrete steel;
 - Half-finished products for tubes;
 - Half-finished products for re-rolling or tubes.
- (7) S.C. SIDERURGICA S.A. Hunedoara is the largest manufacturer of long steel products in Romania.
- (8) The secondary activities of SIDERURGICA are:
- Steel casting – CAEN code – 2752
 - Metal products manufacture obtained from plastic distortion – CAEN code – 2840
 - Cast iron casting – CAEN code – 2751
 - Light non-ferrous materials casting – CAEN code – 2753
 - Metal structures and components – CAEN code – 2811
 - Equipment manufacture for metallurgy – CAEN code – 2951
 - Goods for road transports – CAEN code – 6024
 - Information data manufacture – CAEN code – 7230
- (9) The manufacture activity of the Company is performed in several stages and it is organized as it follows:

I. STEELSHOPS SECTOR

1. ELECTRIC STEELSHOP NO. 1 (OE1)

Contains:

- 2 electric furnaces of 50 tones;
- VAD-VOD equipment for secondary metallurgy

Manufactures:

- 3.5, 5.2 and 6.5 tones ingots for the 800 mm Rolling Mill Forge sectors;
- polygonal ingots for Forge sector;
- 4.2 t polygonal ingots for tubes processing.

2. ELECTRIC STEEL SHOP NO. 2 (OE2)

Contains:

- 1 electric furnace of 100 tones;
- 1 electric furnace of 100 tones EBT;
- ITV secondary metallurgy installation;
- Continuous casting installation.

Manufactures:

- 6.5 tones ingots 800 mm Rolling Mill Forge sectors;
- polygonal ingots for Forge sector;
- liquid steel for continuous casting;
- billets tubes Ø 150 mm, Ø 180 mm and blooms for re-rolling 240x270 mm.

Destination of the product:

- customers sales;
- blooms for re-rolling 240x270 mm.

II. ROLLING MILLS SECTOR

Contains:

- 800 mm rolling mill;
- heavy profiles rolling mill;
- medium profiles, light profiles and wire rolling mill.

Manufactures:

- heavy profiles;
- medium profiles;
- small profiles;
- wire.

1. 800 mm ROLLING MILL (L 800)

- a. raw materials of stainless, alloyed, unalloyed steel ingots of 3.5 t, 5.2 t, 6.5 t manufactured by OE1 and OE2
- b. Products:
 - Square billets 80x80 – 140x140 mm;
 - Square blooms 150x150 – 400x400 mm;
 - Round steel Ø90 – 220 mm;
 - Raw peeled steel bars Ø90/Ø85 – Ø180/Ø175 mm.
- c. Destination of the products:
 - Customers sales;
 - Forge – blooms, billets;
 - Blooms for re-rolling;
 - Billets for re-rolling.

2. HEAVY PROFILES ROLLING MILL

- a) raw materials:
 - continuous casting blooms 240x270 mm;
 - re-rolling blooms 160x160 – 280x250mm;
- b) products:
 - UPN sections 140 – 240mm height;
 - IPN sections 160 – 240 mm height;
 - Corner section with equal wings L 120x120x10 – L160x160x18 mm;
 - Special sections (SG, Sigma, ploughshares, caterpillar chains);
 - Round billets Ø90 – Ø180 mm;
 - Square billets #120-#160 mm;
 - Re-rolled billets #70 - #160 mm;
- c) production capacities:
 - Loading and heating the blooms, half-finished in the propulsion furnaces;
 - Products rolling;
 - Dividing rolled products;
 - Products cooling on cooling beds or holes;

- Products adjustment: polishing, peeling.

d) destination of the products:

- Customers sales;
- Billets for re-rolling.

3. MEDIUM, LIGHT ROLLING MILLS AND WIRE

a) raw materials:

- square billets 80x80mm;80x80 x 12000mm.

b) products:

- round bars Ø14 –Ø80mm;
- wide bars 20x5 – 150x30mm;
- corner section with equal wings L 20x20x3 – L 100x100x12mm;
- T section with equal wings T 30 - T50mm;
- Bars with smooth surface for concrete re-enforcement Ø12 –Ø40mm;
- bars with periodical profile for concrete re-enforcement Ø12 – Ø40mm;
- round wire Ø5.5 – 12mm;
- wire with smooth surface for concrete re-enforcement Ø5.5 – Ø12mm;
- wire with periodical profile for concrete re-enforcement Ø8 – Ø12mm;
- square billets and blooms with 80x80 – 160x160 mm section and 4.5 – 7 m length;
- square bars 36x36 mm – 70x70 mm;
- U section with 50 – 120 mm height;
- I profile with 80 –120 mm height;
- Omega profile;
- Vanwersch profile;

III.1.2. Economic-financial results of SC SIDERURGICA SA during the period 2000-2002

Table no. 3. The total turnover

Turnover (ROL thousand)		
2000	2001	2002
1,593,437,255	2,522,174,857	2,493,594,062
Turnover (USD thousand)		
73,454	86,789	75,438

Source: AVAS

- (10) Analyzing the turnover evolution consolidated in currency, achieved by the Company, it shows an increase of 18% in 2001 compared to 2000, followed by a depreciation of 10% in 2002 compared to 2001.

- (11) Analyzing the dedicated national market, it shows that the Company mainly works for the national market, the international market represents 30.3% in 2000, 21.7% in 2001 and 30.7% in 2002 from the total turnover.

Table no. 4. The turnover on the national market

Turnover (ROL thousand)		
2000	2001	2002
1,110,913,787	1,974,472,495	1,728,448,069
Turnover (USD thousand)		
51,211	67,942	52,290

Source: AVAS

- (12) From the situation transmitted by the Company, it results the following turnover and losses for 2003:

Table no. 5. Profit/losses on the Romanian market

Profit (+)/losses (-) (ROL thousand)		
2000	2001	2002
-225,525,477	-334,540,716	-2,157,723,583
Profit (+)/losses (-) (ROL thousand)		
-10,396	-11,522	-62,277

Source: AVAS

- (13) Analyzing the results consolidated in currency, it shows that SC SIDERURGICA SA Hunedoara registered a significant depreciation of its activity, the losses in 2002 being approximately 5.4 times bigger than the losses in 2001, for the results consolidated in currency.

III.2 The Privatization Contract

- (14) The shares sell supply of APAPS at SIDERURGICA was approved by APAPS Management College Decision to be performed together with the shares held at SC PETROTUB SA Roman.
- (15) The advertisement was guaranteed by the publication of the sell announcement in the international newspaper "WALL STREET JOURNAL EUROPE", the national newspaper "EVENIMENTUL ZILEI" and the local newspapers "HUNEDOREANUL" and "MONITORUL DE NEAMT" and by electronic means (Internet) on 23.07.2003.
- (16) The announcement stated that, at the negotiation, only the suppliers (directly or through the companies where they are shareholders) who will prove the fulfilment of the following criteria of prequalification, shall participate:
- turnover in 2002 of USD 1,5 billion;
 - experience, tradition and presence on the market of more than 5 years in steel and steel finished goods manufacture industry, as basic activity objective;
 - only the Romanian or foreign natural or legal persons can participate to the privatization, that, directly or through the companies where they are shareholders/majority associate, haven't wittingly worsen the economic-financial situation of some foregone privatized

companies, as a result to the non-fulfilment or delayed fulfil of the obligations contained in sell-buy shares contracts with FPS and/or APAPS.

- (17) The binding condition for the participation to the negotiation of the supplier is to present a Business Plan for less than 5 years, containing the technical elements related to these two companies (goods, potential market, manufacture technologies, organization, the goods and manufacture quality) and economic-financial elements (investments, working capital, economic-financial indicators) and also the finance sources.
- (18) The presentation file was bought by a single company – LNM HOLDINGS NV that handed in the buying offer of these two companies.
- (19) The Sell-Buy Shares Contract was signed on 28.10.2003, and the transfer of the ownership rights took place on 22.04.2004 when all the Contract clauses were met.

III.3. The Relevant Market Description

III.3.1. Analysis of the relevant product and geographical market

- (20) Steel activity in Romania develops on 33 manufacture companies and 4 research-development institutes. Their activity profile totally covers internal needs of products and auxiliary products of casting, steel and their derivatives. A consistent quantity of steel products is exported all over the world, registering a constant positive commercial balance.
- (21) Structurally speaking, the product iron sector has 7 steel integrated companies, 5 laminated tubes manufacturing, 3 welded tubes manufacture facility, 14 laminated products manufacture, 2 steel manufacture facilities of cast iron and castings, one steel manufacture facility of ferrous alloys and one casting company.
- (22) The manufacture capacities in Romania were of about 18 million tonnes per year in 1989. Beginning with 1990, the steel production decreased due to the decrease of the domestic market demands. In 1993, the Romanian steel industry had a production of 17.4 million tonnes of steel per year and, in 2003, the production was of 9.4 million tonnes of steel per year.
- (23) At the end of the restructuring period, the Romanian steel operational capacities will be about 9.0 million tonnes/year, out of which 5.7 million tonnes at SIDEX SA Galati. After cancelling the restructuring programmes, it is estimated that Romanian steel industry will reach the European technical and economic standards.

III.3.2. The evolution of deliveries on the domestic and export markets

- (24) Siderurgica Hunedoara is the largest supplier of long steel products in Romania. Until 1999, the Company functioned as an integrated steel manufacturer, with a production based on independent plants for sintering, coke-making, blast-furnaces and Siemens

Martin furnaces. The manufacturing programme includes the whole range of long steel products (sections, concrete steel, wire rod and also half-finished products like billets for tubes). Moreover, the Company has the necessary technical equipment to manufacture carbon steel as well as special steels.

Table no. 6. The evolution of deliveries during 1998-2002 1000 tonnes/year

Products	1998	1999	2000	2001	2002	2003
Billets for pipes	69	28	58	106	57	16
Heavy sections – carbon	74	48	47	66	75	59
Heavy sections – alloyed	26	15	18	7	1	0
Medium and light sections	196	130	113	103	90	75
Reinforcing bars	59	43	23	31	32	26
Wire rod	67	27	2	2	8	5
Special sections	1	0	1	1	1	0
Mining sections	7	3	6	7	7	0
Other products	11	1	1	1	6	2
Total	511	295	268	323	277	183

Source: The Ministry of Economy and Commerce

- (25) In spite of the difficulties arising from the lack of adequate working capital, Siderurgica Hunedoara had a relatively steady sales performance with annual deliveries of around 300,000 tones in the period 1999 – 2002.

III.3.2.1. The deliveries on the domestic market

- (26) The deliveries to the domestic market account for around 70% of the Company's sales (in total volume). The most important product groups in the domestic sales were billets for pipes as well as heavy, medium and light sections. In the recent years, the alloyed heavy sections have virtually disappeared from the domestic production portfolio.

- (27) The main important national clients in 2002 were:

- S.C. SILCOTUB S.A. Zalau – with total sales of ROL 296.847.024 thousands;
- S.C. PETROTUB S.A. Roman – with total sales of ROL 177,590,238 thousand;
- National Company of Mining Coal Petrosani – with total sales of ROL 44,689,764 thousand;
- S.C. TREMAG S.A. Tulcea – with total sales of ROL 44,517,659 thousand;
- S.C. ICSH S.A. Hunedoara – with total sales of ROL 41,853,964 thousand.

- (28) The two largest customers of Siderurgica Hunedoara were the tube-makers Petrotub Roman and Silcotub Zalau. These customers accounted for over one-third of domestic sales.

- (29) The distributors and traders acted as a major sales channel between the Company and the end-users. The remainder of the customer base is very fragmented, with most of industries absorbing relatively small quantities of the Company's products. Out of the individual industries, served directly by Siderurgica, the construction, mining and machine building/ mechanical engineering ones are relatively important.

III.3.2.2 The deliveries on the export market

- (30) During the analyzed period, the export sales of Siderurgica Hunedoara reached annual levels of approximately 100,000 tones. The main export products of the Company are the sections which generate 80 to 90% of the export sales. The export quantities of reinforcing bars and wire rod are of less importance.
- (31) The Company has a system of well established business relationships with the export clients and benefits of a relatively steady position on the respective export markets. As can be seen from the table below, the export focus is regional, primarily on the CEE and the Balkans, and to a much less extent to the Western Europe.

Main export markets of Siderurgica Hunedoara in 2002

Region/ country	Share of total exports (%)
Turkey	30
FRY	26
Syria	12
Spain	8
Greece	7
Italy	5
Others	12
Total	100

Source: The Business Plan of Siderurgica

III.3.2.3. The Competition situation; the main competitors

- (32) As virtually the largest domestic supplier of heavy sections and billets for pipes, Siderurgica Hunedoara has a strong position within these market segments. Within the market segments of medium and light sections, as well as in that of reinforcing bars, the Company has to face competition from both the EAF based mills (Targoviste, Campia Turzii) and from re-rollers such as Ductil Steel Buzau, Otelinox Targoviste, Laminorul Braila, Laminat Focsani, Lamdro Turnu Severin.
- (33) The main Romanian competitors of S.C. SIDERURGICA S.A. Hunedoara, on each sector of the relevant market identified in 2002 and their share market are presented below:

Table no. 7. The main Romanian competitors

Competitors	Market share [%]
Half-finished products	
ISCT Campia Turzii	1.9
CSR Resita	<1
Gavazzi Steel	<1
Polskie Huty Stali(Polish manufacturer)	0.7
Profiles	
Otelinox Targoviste	32.9
Laminorul Braila	10.7
Gavazzi Steel	<1
CSR Resita	<1
COST Targoviste	20.2
Polskie Huty Stali(Polish manufacturer)	6.1
Wire and concrete steel	
COST Targoviste	27

ISCT Campia Turzii	29.1
Ductil Buzau	11.4

III.3.2.4. The S.C. SIDERURGICA S.A.'s market share

- (34) The steel market share was determined and approved pursuant to the Romanian steel restructuring, and, as a result, S.C. SIDERURGICA S.A. Hunedoara has its own market share.
- (35) In 1989, S.C. SIDERURGICA S.A. Hunedoara's steel market share was of 22.36% and in 2002 was of about 5.47%. The Viability and Restructuring Plan for SIDERURGICA presents a steel manufacture capacity of 800 thousand tones in 2010.
- (36) Considering that from ISPAT SIDEX will derive a difference of raw material (billets) for supplying the difference of steel manufacture capacity, S.C. SIDERURGICA S.A. Hunedoara has a target of 700 thousands tones in 2008, of finished products.
- (37) This manufacture is an important element in establishing specific indicators upon this sector and it represents the allocated share of 12.23% of SIDERURGICA in 2008.
- (38) Considering that the important part of the products' portfolio is represented by the ECSC long steel products, the market share presented below refers to this kind of products.

Table no. 8. The market share

Products	2002		Market share (%)
	Siderurgica deliveries (thousand tones)	Romania's consumption (thousand tones)	
Billets for tubes	57	1,024	5.6
Heavy profiles	76	100	76
Middle-sized and light profiles	90	121	74
Concrete steel	31	148	21
Laminated wire	8	104	8
Total	262	1,497	17.5

Source: The Business Plan of Siderurgica

III.3.2.5. The Business strategy

- (40) The privatization process was finalized in the forth term of 2003, when Siderurgica was bought together with Petrotub Roman by LNM Holdings Group.
- (41) Siderurgica will become the main supplier of the pipe manufacturer – Petrotub Roman, which is also held by LNM Holdings, getting supplies of billets for pipes from Siderurgica, mainly. Besides, through the production of sections and concrete steel, the Company shall be able to partially ensure the domestic demand for long steel products.
- (42) Under the Business Plan, the export will be over 30% of the Company's delivery. Siderurgica's export will be almost entirely focused on heavy, medium and light sections.

- (43) The Company's performance in the period of analysis, combined with the network, sale and marketing potential of LNM Holdings, will ensure the maximum level of export forecasted for Siderurgica.
- (44) Siderurgica intends to gain an efficient rolling mill capacity and to manufacture profiles (heavy, medium and light) and round billets for tubes. Almost 10% of the manufacture will be of concrete steel.
- (45) [...]¹
- (46) The Deliveries and the evolutions of production are presented in the tables below. The obvious increase of production in 2004-2005 is due to the achievement of the Company by LNM Holdings. This can solve the working capital problem of Siderurgica and the external markets will become accessible by the manufacturers of the Group.

Table no. 9. The total sales 2002- 2008 ¹

thousand USD							
Products	2002	2003	2004	2005	2006	2007	2008
Billets for pipes	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<i>Heavy sections</i>	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Middle-sized and light profiles	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Concrete steel	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Galvanized wire	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Special profiles	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Profiles for the mining industry	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Other products	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Total	[...]	[...]	[...]	[...]	[...]	[...]	[...]

Source: the Business Plan of Siderurgica

Table no. 10 Total sales 2002-2008 ¹

	2002	2003	2004	2005	2006	2007	2008
Domestic	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Billets for pipes	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<i>Heavy sections</i>	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Middle-sized and light profiles	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Concrete steel	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Galvanized wire	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Special profiles	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Profiles for the mining industry	[...]	[...]	[...]	[...]	[...]	[...]	[...]

¹ Confidential data

Other products	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Domestic total	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Export	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Billets for pipes	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<i>Heavy sections</i>	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Middle-sized and light profiles	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Concrete steel	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Galvanized wire	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Special profiles	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Profiles for the mining industry	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Other products	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Total export	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Total	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Products	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Billets for pipes	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<i>Heavy sections</i>	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Middle-sized and light profiles	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Concrete steel	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Galvanized wire	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Special profiles	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Profiles for the mining industry	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Other products	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Total	[...]	[...]	[...]	[...]	[...]	[...]	[...]

Source: the Business Plan of Siderurgica

IV The Restructuring Plan

- (47) In order to get the Company ready for privatization, the Romanian State adopted a series of restructuring measures. Consequently, the old steel facility was divided into two entities: one was considered viable and was to be privatized, and the other one was considered nonviable and was to be liquidated in 2-3 years, by unbundling and cleaning its perimeter.
- (48) The initial period of application of the Protocol 2 has embodied in steel sector in the important reduction of the production capacity.
- (49) In 1991, the Company has totally closed the Siemens Martin 1 Steel Shop, and in 1992, the Company has also closed two furnaces of the Siemens Martin 2 Steel Shop; in the

period 1993-1996, the Company needed to cease almost entirely the Siemens Martin 2 Steel Shop.

Table no. 11. The closure of the steel shop

Nr. crt.	Capacity	Observations	Ceasing year	Cassation year
1.	Steel Shop Siemens Martin 2	Furnace Siemens Martin 4 – 375,000 t	1997	1997
		Furnace Siemens Martin 8 – 375,000 t	1997	1997
3.	Electric Steel Shop 1	Electric Furnace no. 1 – 35,000 t	1995	

Source: AVAS

(50) In the period 1998-2003, SIDERURGICA SA Hunedoara closed an important number of production capacities, considered non-viable. The company identified the non-efficient production capacity and in 1999 has closed the following aggregations and technological installations:

- 2 coking plants (500,000 tones/year) ;
- 1 agglomeration band (1,075,000 tones/year) ;
- 1 furnace Siemens-Martin of 400 tones (375,000 tones/year) ;
- the sections I and II;
- the cast iron production capacity for 350,000 tones/year has been closed;
- section I and II furnace ;
- raw materials deposits;
- Craciunesti limestone production section;
- The partial cease of the installations of production and distribution of energetic components;
- reducing the activity of railway transport due to the primary flow.

(51) By this programme, the production capacities of 375,000 tones liquid steel /year have been closed.

(52) The maintenance of the exceeding personnel influenced the level of the production costs. According to the Romanian Steel Restructuring Programme, SIDERURGICA SA Hunedoara reached a productivity of 46 tones/person/year in 2002 and the personnel number was of 5,875 in 2003.

(53) This level of productivity might have been reached if the Company would have applied a very severe lay off programme. As it is presented in the Financial Administration Reports of the economic-financial years, the Company kept an exceeding personnel number in order to overcome the social difficulties related to the unemployment in the area concerned.

(54) All these aspects are reflected in the Balance Sheet of the years analyzed, with direct influence over the exploitation expenses and incomes. From the analysis, it results that in the period 1998-2003, there is a supplementary cost with the personnel, generated by the keeping of a supplementary number of personnel..

(55) [...]²

² Confidential data

- (56) The Restructuring Programme of the Company, taking place during 2003-2008, includes a series of restructuring measures, consisting in *social and organizational restructuring, technical and technological restructuring, financial restructuring*.

IV.1. The Technical and technological restructuring

- (57) Until 2003, the Romanian Government decided that some technological restructuring measures took place in order to prepare the company for privatization. Consequently, between 1998 and 2004, there were realised technical and technological investments in amount of USD 162.2 million.
- (58) Having the purpose to fulfil the technical and technological restructuring, the Company will develop, beginning with 2008 an Investment Programme.
- (59) Technologically speaking, there are some problems that must be solved:
- the secondary metallurgic capacity from Steel Melting Shop no. 2 is lower than the capacity for liquid steel (two electric furnaces and only one LF installation);
 - the liquid steel is partially cast in ingots;
 - the rolling mills for finished products are ancient and non-performing.
- (60) For the industrial restructuring, the Viability Plan provides the following main actions:
- the modernization of the Steel Melting Shop no. 2, including the change of the electric furnace no. 2 (classic, closed) in LF installation
 - The modernization of rolling sector;
 - The modernization of the electric steel melting shop no. 1
- (61) Calculating the variable costs on one tone of finished products used in the Business Plan is based on the manufacture indicators with raising prices. So, until the major technological changes estimated for 2004-2005, the variable costs on one tone of finished products will raise.
- (62) By the modernization and investment programme, it is estimated that S.C. SIDERURGICA S.A. Hunedoara will reach the efficiency level necessary for reducing the costs by facing the products factors price rising:
- Modernizing the technology of scrap preparing aims to the reduction of the process, the productivity and the energetic efficiency will increase.
 - Modernizing one of the rolling mills will improve the productivity and it will reduce the costs.
- (63) [...]²

Table no. 12. The Technologic Investments Plan for 2004-2008²

Sector	Investments(mil USD)
	2004-2008
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]

Source: AVAS

Table no. 13. Performance Indicators Envisaged for SC SIDERURGICA SA³

No. crt.	Indicator	Result, measure unit	Envisaged level	
			2002	2008
1	[...]	[...]	[...]	[...]
2	[...]	[...]	[...]	[...]
3	[...]	[...]	[...]	[...]
4	[...]	[...]	[...]	[...]
5	[...]	[...]	[...]	[...]
6	[...]	[...]	[...]	[...]
7	[...]	[...]	[...]	[...]

Source: The Business Plan of Siderurgica

(64) The total proportion of the continuous casting can not exceed 100% due to the steel mill no.1, which will continue to function with casting blocks.

IV.2. The Environmental Protection Programme

(65) As far as it regards the environmental protection, environment investments are necessary in all the sectors (water, air, soil) to be performed in parallel with the technological investments. The total amount of the investments, necessary for the accomplishment of the environment requests, is estimated to USD 4.1 mill. (including for the closing of the operational flow).

(66) However, after splitting the Company and closing the primary production flow (coke, agglomerating plant and the oven) most environment problems will be externalized. The assets from the closed operational sectors are transferred to a separate division and afterwards, to a new company which will be established for taking over the ecologic actions. The main priority for the closed operational sectors is to determine the risk factors and to take the necessary measures to prevent them. The biggest environment danger is given by the existence of toxic materials within the area; materials resulted from the coke obtaining process.

(67) Moreover, for managing the ecologic problems in the closed operational sectors, a different company was established in the 1st half of 2004. The necessary environment investments are estimated to USD 7 mil, but the Company's Business Plan was not taken into account, as the new established legal entity shall take over this activity.

IV.3. The Organizational and Social Restructuring

(68) Within the organizational and social restoration, a number of branches were externalized and the personnel number was reduced.

(69) The Restructuring Plan foresees medium costs of USD 6,271 / employee/year until 2008. SC SIDERURGICA SA Hunedoara started, in the last 6-7 years a wide programme for the reduction of the personnel: from approx. 17,000 employees in 1997 to 7,500 employees in the beginning of 2002 and 2,280 employees in 2004. The correlation of the employees number with the technological progress level is planned, and, in the end, it implies job reduction from the manufacturing sector.

³ Confidential data

IV.4. The Financial Restructuring

- (70) The Financial Restructuring Programme encloses a number of measures regarding the historical debts of SC SIDERURGICA SA Hunedoara, mainly the erase of the delay penalties and increases for the non-payment of the debts for the State budget. The main part of these restructuring measures were granted in 2003. A big part of the accumulated penalties are related to the production capacities closed between 1994 and 2000.
- (71) The debts related to the closed production capacities are shown by the accounting Balance Sheets of the Company for the years 1994 to 2000 and led to an increase of the debt degree of the Company. The Romanian authorities did not start an immediate financial restructuring, thing that led to the difficult economic- financial situation of 2003. The delay penalties and the increases related to the historical debts continued to accumulate until the moment of the owner right transfer to LNM Holdings NV. That was the moment when they were erased or when they were converted into shares.
- (72) The financial restructuring implied, until 1997, the following measures:
- capital injections from State Owened Found (SOF) for modernizing the electrical arch furnace and the continuous fount installation;
 - loans without interest for the payment of energy and methane gas;
 - loan with 30% interest from the National Bank for modernizing the electrical arch furnace and for the continuous fount installation.
- (73) The facilities granted to the Company between 1993-1997 are related to the closing of capacities during this interval.
In the period 1999- 2002, no type of facilities was granted.
- (74) According to the provisions of GEO no. 88/1999, GO no. 450/1999 and GEO no. 116/2003 on privatization of SIDERURGICA SA Hunedoara the facilities from the owned debts payment granted to SC SIDERURGICA SA Hunedoara consist in:

**Table no. 14. The facilities from the owned debts payment granted to
SC SIDERURGICA SA Hunedoara**

Nr. crt.	Masura	Valoare (ROL million)
A.	State aid granted according to the provisions of GEO no. 88/1999 and to the provisions of GO no. 450/1999 and to the Procedure for the allocation of the funds for the covering of the costs due to operational closing in the period 27,11,1999-27,01,2000	15,184
B.	State aid granted According to the provisions of GEO no. 116/2003 on privatization of SIDERURGICA SA Hunedoara	
1.	Exemption from the payment of taxes, fees, contributions to the state budget, the Social Insurances Budget, Unemployment Insurances, the National Unique Fund for the Social Health Insurances and the local budget	1,647,503
2.	Exemption from the payment of the interests, added value and penalties for the delay of the payments	3.418.802
3.	The exemption from the payment of the loan granted by APAPS for payment to the utility suppliers	478,200

4.	Exemption from payment of the loans granted by APAPS for restructuring and investments	165,851
5.	Taking over by the APAPS of the payment obligations afferent to the credit granted by the Commercial Bank of Romania	195,216
6.	The conversion into shares of the debts owed to the suppliers of utilities (Electrica, Distrigaz, CFR, SNTFM)	568,896
7	Exemption from the payment of the interests and the penalties for the delay payment to the utility suppliers (Electrica, Distrigaz, CFR, SNTFM)	2,556,805
8.	Exemption from payment of the loans granted by MFP for invesments and payment of utility suppliers	906,099
	TOTAL	9,952,556

Source: AVAS

(75) These facilities are granted until 2004. SC SIDERURGICA SA shall not receive any other facilities until 2004.

(76) The aids granted to SIDERURGICA before the Law on State aid entered into force, with subsequent completions and amendments are existing aids. The aids between 1993-1997 were related to closing down capacities operating until privatization and they were granted under the Protocol no. 2 on ECSC products of March 29th, 1993, attached to the Europe Agreement.

IV.5. The Restructuring costs, the funding sources and the planned financial situation

(77) From the data presented, it results that the value of the total gross restructuring cost for the period 1993-2008 is of USD 480 million. The gross value of the State aid is of USD 306.1 million.

(78) The contribution of the State aid beneficiary to the achievement of the restructuring programme is of USD 174 million.

V. The Assessment of the State Aid Measure

V.1. The State aid's character and that of the financial support granted to SC SIDERURGICA SA Hunedoara

(79) 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.

(80) The financial support measures are granted to SC SIDERURGICA SA Hunedoara based on the Modified Viability Programme for applying the restructuring strategy for the steel industry in Romania. Also, a state aid was granted in 2000 for the covering the expenses for the partially operational closing in the period 27.11.1999-27.01.2000, according to GEO no. 88/1999, GO no. 450/1999 and to the Procedure of the allocation of the funds for the covering of the cost due operational closing.

- (81) The payment facilities are granted based on the EGO no.116/2003 regarding the privatization of SC SIDERURGICA SA, for restructuring the undertaking for accomplishing the targets approved in the Restructuring Strategy for the steel industry. These facilities consist in giving up by the budgetary creditors, APAPS and the utility suppliers (Ministry of Economy and Commerce, Ministry of Labour, Social Solidarity and Family, the National House of Health Insurances, the Ministry of Transports, Housing and Tourism and Hunedoara County City Hall) to certain future incomes, by granting facilities for the payment to the above mentioned ones, (annulment of debts). The facilities were assessed by APAPS, SC SIDERURGICA SA, the budgetary creditors and the utilities suppliers and are to be granted for making the Company viable.
- (82) Assessing the support measures, the Competition Council notes that there is no doubt that these are financed from State resources and give an advantage to SC SIDERURGICA SA Hunedoara. Also, there is no doubt that the taken financial measures affect the trade with the Member States of the European Union, as the products manufactured by SC SIDERURGICA SA are also marketed on the foreign market, even if the direct sales of the company's products to the EU is low.
- (83) Concluding, the granted financial support measures are State aids and subject to the Law no.143/1999 regarding the State aid, amended and completed by the Law no.603/2003 (hereinafter called Law).

V.2. Compatibility Assessment

- (84) The Competition Council made an analysis to find out whether the State aid may be considered compatible with a normal competitive environment under Article 2 par.2 and 3 of the Law and observes the international Agreements which Romania is part of.
- (85) The general criteria for assessment of the State aid for restructuring granted in the steel sector are provided in the Protocol no. 2 on CECO products, annex to the Europe Agreement.
- (86) The objective of the state aid is the restructuring of SIDERURGICA Hunedoara with a view to restore the Company's viability by the end of the restructuring period. The State aid must be analyzed under the criteria in Protocol 2 on the ECSC products, Annex to the European Agreement which sets up an association between Romania, on the one hand, and the European Communities, and the Member States thereof, on the other hand. Under the Article 9, the state aid for rescue and restructuring may be considered compatible with a normal competitive environment and they are considered not to affect the trade between Romania and the Member States if they strictly meet the criteria and if it is certain that the advantages resulting from the undertaking's survival will compensate any distortion of the competition, and especially if the net effect of lay-offs, after the Company's bankruptcy, combined with the effects it can have over suppliers, would increase the unemployment nationwide.

- (87) 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 :
- the firm is in economic difficulty;
 - the implementation of the restructuring plan leads to the viability of the company under normal market conditions at the end of the restructuring period;
 - the value and the intensity of the State aid is strictly limited to the minimum necessary to restore the viability and the aid is progressively reduced.
 - the restructuring programme must be linked to a rational globalization and reduction of the production capacity in Romania

V.2.1 Diagnosis-analysis; firm in difficulty

- (88) 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.
- (89) Until 2003, the year of privatization, SIDERURGICA HUNEDOARA was a company with financial difficulties, and was not able, either through its own financial resources, or through resources from creditors, to cover its losses, and without the intervention of the public bodies, it was condemned to exit the economic circuit.
- (90) As a consequence of a recurrent decline which started in the beginning of 1999, owed on its turn to the 1997 crisis in Asia, the steel industry went through a dramatic period of changes related to the demand and the price at the end of 1999 and 2000, which had repercussions on the financial situation of the Company.
- (91) Given the evolution of the main economic and financial indexes registered between 2000-2002, one can notice:

a. The Diminishing of the registered capital :

	2000	2001	2002
Registered capital (thousand ROL)	623,118,075	623,118,075	778,960,275
Profit/Loss (thousand lei)	-225,525,477	-334,540,716	-2,157,723,583
Loss/registered capital (%)	-36	-54	-277

Source: AVAS

b) The reduction of its own capitals

	2000	2001	2002
Own capitals (thousand ROL)	545,880,370	-3,245,691,142	-5,138,034,021
Profit/Loss (thousand ROL)	-225,525,477	-334,540,716	-2,157,723,583
Loss/ own capitals (%)	-41	10	42

Source: AVAS

- (92) From our analysis, we notice a severe reduction of losses from own capitals due to the increase of the uncovered loss and to losing the current financial year.
- (93) Also as a consequence of the new accounting system, the losses accumulated in the previous years were reflected in the undivided result and significantly affected its own capital, mainly the Balance of Liabilities.

c) The Degree of the Indebtedness (total debts/ total payable)

	2000	2001	2002
Total debts (thousand ROL)	2,283,402,030	6,345,042,758	8,567,354,968
Total liabilities (thousand ROL)	2,865,891,196	3,104,027,433	3,430,725,893
Total debts /total liabilities (%)	80	205	250

Source: AVAS

- (94) From the analysis, it results that the degree of indebtedness was increased; in 2002 the total debts registered an amount of 2.5 times higher than the Total Liabilities, the higher proportion representing the debts that had to be paid in less than one year (91%)

d) The Patrimony solvency (its own capital/total liabilities)

	2000	2001	2002
Own capitals (thousand ROL)	545,880,370	-3,245,691,142	-5,138,034,021
Total liabilities (thousand ROL)	2,865,891,196	3,104,027,433	3,430,725,893
Solvency (%)	19	-105	-150

Source: AVAS

- (95) As shown by the above indexes, the Company is not solvent because it has a high degree of indebtedness (150%) and because it lacks liquidities.
- e) The Economic accountability (operating profit/turnover)*
- (96) There is no question regarding the accountability of SIDERURGICA since the results from the operations were constantly increasing and negative; in 2002 they represented 97% from the total losses.

f) Increase of losses

- (97) The Accounting Balance indicates that between 2000-2002, the Company registered an accumulated loss of ROL 2,717,789 thousand, i.e. approximately 3.5 times the registered capital. As shown above, the big loss in 2002 is owed mainly because, in the expenditures, the extra-balance penalties and accretions related to the State budget obligations and to the contracts not paid in due time – were included.

g) The increase of the company's debts

- (98) The Accounting Balance for 2002 indicates that the debts of the commercial company increased with almost 35% compared to 2001 and with 3.75 times compared to 2000.
- (99) All these issues show real payment difficulties for all the Company's obligations, and the fact that the state aid granted at the privatization was strictly necessary for the Company's viability.
- (100) The overall analysis shows that the company was practically in a state of insolvency. The total loss of its own capital, heavily increasing losses, mounting total debts, mounting percentage of debts to the State budget within the total amount of debts and rising interest charges, prove the company's dramatic economic situation.

V.2.3. The Restoration of the Company's viability

- (101) As provided under the Art. 9.4. of the Protocol 2 on ECSC products, implementing the measures of the restructuring plan shall have to ensure the Company's long-term viability and its functioning upon its own resources. Meeting the viability criteria stands for an essential element in the Competition Council's evaluation of the compatibility of the State aid for restructuring, with a normal competitive environment.
- (102) Given the fact that the steel sector is a sensitive sector of the European economy and given the fact that the European experience in the steel industry restructuring, the Competition Council based its analysis of restoring the Company's viability on the Viability Test of the European Commission.
- (103) The main viability indexes (criteria) are:
V1 – gross operational margin;
V2 – gross profit rate;
- (104) At the end of the restructuring period, the viability indexes for SIDERURGICA must meet the following values:
- V1 must be higher than 10.0% from the income obtained from the sales of steel products;
- V2 must be higher than 1.5% from the income obtained from the sales of steel products;
- (105) In order to meet the viability indexes of the European Commission Test, the Company achieved a 5-year prognosis of the Profit and Loss Account evolution, of the accounting Balance and of the Cash-Flow based on actual prices. This meant:

- Predicting the incomes based on selling prices and the production volume, as estimated in relation to the potential development of the international steel market;
- Estimating operational costs, by applying different rates of inflation for materials, energy and fixed costs.

(106) In the case of the ‘first set’ of financial forecast, mainly before adjustment, the Viability Test is based on the Company’s incomes and costs. The incomes and costs for the purposes of this calculation are related to the metallurgy. The turnover is the result of the incomes collected from the sale of steel products.

Table no. 15. The Forecast for the 5 years of profit and losses, in actual prices:⁴

Thousand USD	2004	2005	2006	2007	2008
Turnover, out of which: - Incomes from sales of steel products - Other incomes Variable expenses	[...]	[...]	[...]	[...]	[...]
Contribution, out of which: Fixed expenses	[...]	[...]	[...]	[...]	[...]
Operational margin Depreciation/Amortization	[...]	[...]	[...]	[...]	[...]
Profit/Loss Financial incomes Financial expenses	[...]	[...]	[...]	[...]	[...]
Gross profit Profit tax	[...]	[...]	[...]	[...]	[...]
Net profit	[...]	[...]	[...]	[...]	[...]
Profit after deduction of dividends	[...]	[...]	[...]	[...]	[...]

Source: The Business Plan of Siderurgica

(107) To apply the European Commission Viability Test implies to check the following indexes:

- The level of depreciation/amortization (which must be of 5% minimum from the incomes obtained from the sales of steel products);
- The level of financial expenses (which must be 3.5% minimum from the incomes obtained from the sales of steel products).

(108) The above data led to the following situations concerning the depreciation and the level of financial expenses:

Table no. 16. The Situation of the level of depreciation/amortization⁵

Thousand USD	2004	2005	2006	2007	2008
Turnover	[...]	[...]	[...]	[...]	[...]
Depreciation	[...]	[...]	[...]	[...]	[...]
% of the turnover	[...]	[...]	[...]	[...]	[...]

⁴ Confidential data

⁵ Confidential data

before adjustment					
% of the turnover (minimum necessary)	[...]	[...]	[...]	[...]	[...]

Source: Business Plan of Siderurgica

Table no. 17 Situation of the level of financial expenses⁵

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

Source: The Business Plan of Siderurgica

(109) The data in the above tables, after achieving the 5-year financial forecast, lead to the conclusion that the Company does not meet the two criteria absolutely necessary to apply the Viability Test. Thus, in the first phase, it is necessary to perform a 'second set' of financial forecast by applying the special accounting conditions to the 'first set' of financial predictions. These special accounting conditions include minimum levels of taxation and depreciations as percentages between the incomes from the steel sales and limitations of the costs.

Table no. 18. The Situation of the level of depreciation/amortization after adjustment, under the special accounting conditions⁵

Thousand USD	2004	2005	2006	2007	2008
Turnover	[...]	[...]	[...]	[...]	[...]
Necessary surplus	[...]	[...]	[...]	[...]	[...]
Adjusted depreciation	[...]	[...]	[...]	[...]	[...]
% of the turnover after adjustment	[...]	[...]	[...]	[...]	[...]

Table no. 19. The situation of the level of financial expenses after adjustment, under the special accounting conditions⁶

USD Thousand	2004	2005	2006	2007	2008
Turnover	[...]	[...]	[...]	[...]	[...]
Necessary surplus	[...]	[...]	[...]	[...]	[...]
Adjusted financial	[...]	[...]	[...]	[...]	[...]

⁶ Confidential data

expenses					
% of the turnover after adjustment	[...]	[...]	[...]	[...]	[...]

Table no. 20. The forecast for the 5 years of profit and losses related to the current prices after adjustments for depreciation and financial expenses⁶

USD Thousand	2004	2005	2006	2007	2008
Turnover, out of which: - Incomes from the sales of steel products - Other incomes Variable expenses	[...]	[...]	[...]	[...]	[...]
Contribution, from which: Fixed expenses	[...]	[...]	[...]	[...]	[...]
Operational margin Depreciation/Amortization	[...]	[...]	[...]	[...]	[...]
Profit/losses Financial incomes Financial expenses	[...]	[...]	[...]	[...]	[...]
Gross profit Profit tax	[...]	[...]	[...]	[...]	[...]
Net profit	[...]	[...]	[...]	[...]	[...]
Profit after deduction of dividends	[...]	[...]	[...]	[...]	[...]

(110) After enforcing the special accounting conditions, the value of incomes from sales of steel products must be diminished each year with 1.25%, which is the same as multiplying the volume of incomes by 0.9875 ($1 - 1.25\% \cdot 1 = 0.9875$).

(111) Fixed costs, variable costs and depreciation are increased with 1.25%, which is the same as multiplying the volume of each type of cost and of the depreciation by 1.0125 ($1 + 1.25\% \cdot 1 = 1.0125$).

(112) After the reduction of incomes and the increase of the costs and depreciation, the forecast of profit and loss is as below:

Table no. 21. The forecast for the 5 years of profit and losses related to the current prices, after adjustments for depreciation and financial expenses⁷

USD Thousand	%	2004	2005	2006	2007	2008
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⁷ Confidential data

Turnover, out of which: - Incomes from the sales of steel products - Other incomes Variable expenses	- 1,25 + 1,25	[...]	[...]	[...]	[...]	[...]
Contribution Fixed expenses	+ 1,25	[...]	[...]	[...]	[...]	[...]
Operational margin Depreciation/Amortization	+ 1,25	[...]	[...]	[...]	[...]	[...]
Profit/losses Financial incomes Financial expenses	 + 1,25	[...]	[...]	[...]	[...]	[...]
Gross profit Profit tax		[...]	[...]	[...]	[...]	[...]
Net profit		[...]	[...]	[...]	[...]	[...]
Profit after deduction of dividends		[...]	[...]	[...]	[...]	[...]

- (113) After the application of the special accounting conditions and after calculating the price-cost margin, the two viability indexes will be set:
- V1 (gross operational margin) = Marginal costs (incomes from sales of steel products)
 - V2 (gross profit rate) = (gross profit + Financial expenses)/ (incomes from sales of steel products)

Table no. 22. The viability indexes

%	2004	2005	2006	2007	2008	Target
V ₁ (gross operational margin)	0.1	2.6	5.6	6.2	10.7	10.0
V ₂ (gross profit rate)	-8.5	-6.0	-3.0	-2.4	2.1	1.5

- (114) The Viability Test proved that SIDERURGICA HUNEDOARA meets the viability criteria- the gross operational margin and gross profit rate – that will be met in 2008.

V.2.3 Aid limited to the minimum necessary.

- (115) According to the Protocol 2 on ECSC products and to the Regulation on State aid for rescue and restructuring firms in difficulty, the State aid must be limited to the absolute necessary in order to allow restructuring under existing financial resources of the Company or of the shareholders. The level of the State aid must be strictly limited until the objectives of the Restructuring Programme are met. Following the application of the viability test, SIDERURGICA meet the viability criteria in 2008.
- (116) Just as shown by the analysis of the Profit and Losses Account before 2003 privatization, SIDERURGICA HUNEDOARA was practically insolvent and it did meet the criteria to start judicial reorganization and bankruptcy procedure.

- (117) Because of the difficult financial situation the Company was facing, in order to remain on the market, it needed to be privatized and to be granted restructuring State aid. Thus, in 2003, SIDERURGICA's controlling interest was bought by LNM Holdings N.V.
- (118) The economic and financial analysis made by LNM Holdings N.V. proved that, in order for SIDERURGICA to become solvent and to remain in the economic circuit, it needed a substantial financial restructuring by erasing the commercial debts and those for the State budget.
- (119) The Romanian authorities granted State aid to SIDERURGICA HUNEDOARA as erasure of debts amounting USD 282,012,767 and conversion in shares of the State claims amounting USD 14,996,886.
- (120) The Competition Council concludes that the State aid granted to SIDERURGICA HUNEDOARA was limited to the absolutely necessary because the Company was exempted from the old debts as of the year the aid was approved, which will allow the Company to become eligible for crediting. Moreover, the State aid is the minimum necessary for restoring the viability of SC SIDERURGICA SA in the last year of the restructuring period.

V.2.4. The intensity of the state aid

- (121) 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.
- (122) The intensity of aid is 63.9% (USD 306.1 million/USD 480.1 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.

V.2.5 Avoiding the significant distortion of the competition ; compensatory measures

- (123) The Competition Council analyzed the closures of unbundling of capacities, and reached the conclusion that, by closing down of 6160 thousands tons of rolling capacities of which 1160 thousands tons – finished products, the negative effects by granting the State aid were compensated.
- (124) The development of the capacity at SIDERURGICA during the period 2003-2008 is presented below:

Table no. 23 Siderurgica SA capacities

Area	PIF (modernization)	Planned capacity [Kt]		
		2003	2008	Modification
Steel shop		985	950	
Steel shop no 1	1957÷1969	185	150	- 35
Steel shop no 2	1978 (2002)	800	800	

Continuous casting	1998	400	800	+ 400
Rolling		3,920	3440	
Rolling mill 800	1962	300	300	
Semis	1958 (1999)	1,950	1950	
Heavy sections		560	560	
Medium sections	1962	480	*	- 480
Light sections	1962	330	330	
Wired rod	1979	300	300	
Economy sections	-			

Source: The Ministry of Economy and Commerce

(125) The medium sections rolling with a production capacity of 480 thousands tonnes will be closed in the first quarter of 2008 and it will be dismantled in the second quarter of 2008. The rationalization and the reduction of SIDERURGICA HUNEDOARA's production capacities as a proportion of the State aid will compensate its distortive effects, thus a balance will be established between the compensatory factors and the distortive effects of the State aid over the competition.

V.2.7. The progressive reduction of the aid

Table no. 24 The evolution of aid

<i>USD Mil.</i>								
<i>Year</i>	<i>1993</i>	<i>1994</i>	<i>1995</i>	<i>1996</i>	<i>1997</i>	<i>1998</i>	<i>1999</i>	<i>2000</i>
<i>State aid (gross value)</i>	-	-	4.2	4.4	-	-	-	0.7

<i>USD Mil.</i>								
<i>Year</i>	<i>2001</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>
<i>State aid (gross value)</i>	-	-	10.5	286.3	-	-	-	-

(126) The big amount of State aid granted in 2004 is due to the delayed privatization and financial restructuring. Anyway, after 2004, SC SIDERURGICA will not benefit of State aid.

VI. Monitoring and annual reporting

(127) The Competition Council monitors, on a permanent basis, the implementation of the Restructuring Plan so that it meet closely the objectives of the Restructuring Plan. The Competition Council will continue to monitor the implementation of the Restructuring Plan until the end of the period in order to ensure that there will be no increases of capacities of production, major deviations from achieving the restructuring measures, and that the state aid will not create additional liquidities which will be used for activities other than the ones listed in the Restructuring Plan.

VII. Conclusion

(128) Having before it the above, the Competition Council concludes:

(1) The facilities granted to SIDERURGICA are aids which are subject to the Law no. 143/1999 on state aid, with the subsequent amendments and completions

(2) The State aids meet the criteria for authorization under the Protocol 2 on ECSC products, attached to the Europe Agreement setting the association with Romania, on one hand, and the European Communities and the Member States thereof, on the other hand, and are compatible with a 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. 115/06.04.2004, granted to SC Siderurgica SA Hunedoara. Also, by this decision it is authorized the State aid granted to SC Siderurgica SA Hunedoara during the period 1993-1998, in amount of ROL 22.1 billion (USD 8.6 million).

Art. 2. The total amount of State aid authorized by this decision in benefit of SC SIDERURGICA SA Hunedoara during the period 1993-2004 is of ROL 9,974.656 billion (USD 306.1 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;
- SC Siderurgica SA Hunedoara, str. Piata Iancu de Hunedoara, nr. 1, Judetul Hunedoara.

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

**PRESIDENT
MIHAI BERINDE**