

COMPETITION COUNCIL DECISION
no. 123 of 07.07.2005

on the State aid for SC MECANICA SA Marsa

THE COMPETITION COUNCIL,

With regard to the provisions of the European 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 Romanian Official Gazette no. 73, Part I, of 12.04.1993,

With regard to the provisions of the Competition Law no. 21/1996, published in the Official Gazette no. 88, Part I, of 30.04.1996, amended and completed by EGO no. 121/2003, approved by Law no. 184/2004,

With regard to the provisions of the State aid Law no. 143/1999, published in the Official Gazette, Part I, no. 370, of 3.08.1999, with the subsequent modifications and completions,

With regard to the provisions of the Regulation on State aid for rescue and restructuring firms in difficulty, published in the Official Gazette, Part I, no. 470, of 02.07.2002, with the subsequent modifications and completions,

With regard to the provisions of the Decree no. 57/2004 on the appointment of the Competition Council's members,

Based on the following reasons,

1. THE PROCEDURE

(1) By the address no. VP/1391/06.06.2005, registered at the Competition Council with no. RS-AS 24/06.06.2005, the Authority for State Assets Recovery (hereinafter named AVAS), within the privatisation process, notified the individual State aid for the restructuring of SC MECANICA SA Marsa, based on art. 6 of the State aid Law no. 143/1999, amended and completed by Law no. 603/2003 and GO no. 94/2004 on some financial measures.

(2) The Competition Council requested additional information from AVAS. AVAS submitted the additional information by several addresses, registered at the Competition Council with

no. DAAS 545/08.06.2005, DAAS 553/09.06.2005, 585/16.06.2005 and DAAS 588/17.06.2005.

(3) The notification became effective when all information was exact and complete, namely 17.06.2005.

2. DESCRIPTION OF THE STATE AID MEASURE

2.1. Legal base of the state aid measure

(4) AVAS notified the financial incentives package granted in favour of SC MECANICA SA Marsa on the basis of the following acts:

- Art.18 of the Law no. 137/2002 on the acceleration of privatisation;
- Art.281 of the Government Decision (GD) no.577/2002 on the approval of the Methodological Norms for the enforcement of the Emergency Government Ordinance (EGO) no.88/1997 on the privatisation of commercial companies, with the subsequent modifications and completions;
- GD no.239/2003 on the approval of the List of companies under AVAS portfolio that benefit of an extension of the payment incentives provided by art.18 of the Law no. 137/2002 on the acceleration of privatisation, with the subsequent modifications and completions;
- EGO no.26/2004 on some measures for the completion of AVAS portfolio companies' privatisation and the consolidation of some privatisation, approved with modifications and completions by Law no.442/2004
- Government Ordinance (GO) no.36/2004 on the modification and completion of Law no.137/2002, approved by Law no.191/2004
- GD no.794/2002 on the approval of the Methodological Norms on the procedure and abilities to grant incentives on the payment of tax and other revenues due to the local budgets;
- Regulation on State aid for rescue and restructuring firms in difficulty, approved by Order of the Competition Council President no.501 of 23 November 2004.

2.2. Financial incentives provided for SC MECANICA SA Marsa

(5) The financial incentives notified by AVAS were granted in the context of SC MECANICA SA Marsa privatisation. The company will benefit of the incentives mentioned in the Presentation File and the Shares Sale-Purchase Agreement, namely incentives on the payment of outstanding debts towards the State consolidated budget, local budgets and AVAS.

(6) The incentives on the payment of outstanding debts towards the State consolidated budget, local budgets and AVAS to be granted at SC MECANICA SA Marsa privatisation amount up to ROL 238,935,093,951. These incentives consist in payment exemptions of ROL 30,255,598,167 and payment postponements of ROL 208.679.495.784, as follows:

Table no. 1 Incentives granted in favour of SC MECANICA SA Marsa

.....¹

¹ Confidential data

3. BENEFICIARY OF THE STATE AID MEASURE (SC MECANICA MARSA SA)

(7) SC MECANICA SA Marsa is a joint-stock company. When the Shares Sales-Purchase Agreement was signed, the social capital recorded at the Official Trade Register was of ROL 96,973,625 thousand. The social capital was split into 3,878,945 shares with a nominal value of ROL 25,000, according to the comments insertion request no.7474/20.11.2002.

(8) The current SC MECANICA Marsa is located on a former site that belonged to a SKODA subsidiary established in 1939, functioning as a military plant during 1939-1959. In 1958, the plant was assigned to ARSENAL factory of Sibiu. Subsequently, in 1960, the plant was assigned to INDEPENDENTA factory of Sibiu. Since 1961, the plant had become an independent one named Intreprinderea Mecanica Marsa. The company's activities were focused on the construction, repair and selling of vehicle parts (the current SC MECANICA SA Marsa) and military hardware production (RATMIL – Marsa, currently named SC Uzina Mecanica Marsa SA).

(9) SC MECANICA SA Marsa was privatised in 2003 by signing the Shares Sale-Purchase Agreement no.9/14.03.2003, concluded between APAPS (subsequently named AVAS) and the sole bidder constituted of MECANICA PAS Association and OEHLER MASCHINEN of OFFENBURG – Germany. The shareholders structure after privatisation is presented in Table no.2. The property right transfer was carried out on 30.05.2003.

Table no.2 Shareholders structure after privatisation at SC MECANICA SA Marsa

SHAREHOLDERS	CAPITAL	
	Number of shares	Social capital ratio (%)
PAS and OEHLER MASCHINEN	2,743,726	83.164
SIF Transylvania	422,503	12.806
Other shareholders	132,953	4.030
Total	3,299,182	100.00

Source: Notification form (balance sheet)

(10) SC MECANICA SA Marsa main object of activity consists in car bodies, trailers and semi-trailers production.

(11) The company carries out the following secondary activities: auto-vehicles maintenance and repair, road transportation of goods, treatment of metallic and non-metallic surfaces against corrosion, electrostatic painting (with powder), auto-vehicles spare parts and accessories production, water collecting, treatment and distribution.

(12). Within SC MECANICA SA Marsa, after privatisation, the production processes were organised in 3 modules:

M.0. – export production

M.1. – internal market production

M.2. – mechanical conditioning, tool engineering, driving axle

(13) Within M.0. module, the activity is carried out in 2 workshops producing and assembling agricultural trailers of 3.5-20 tonnes, wood transportation trailers of 6-12 tonnes, multifunctional yard tractors types OL 2600 and OL 3600, as well as accessories for the

aforesaid – loaders, grabs etc. Also, within this module the following activities are carried out: pre-painting and electrostatic and polyester painting.

(14) Within M.1. module the following products are fabricated: low trailers and semi-trailers of 20-46 tonnes, agricultural and car trailers of 3.5-18 tonnes, car semi-trailers for general goods transportation, car semi-trailers for oil products transportations, trailers and semi-trailers for special transports, dumper trailers and semi-trailers type SRB 240-350 KN, car-bodies, lorries for general goods transportation.

(15) In module M.2. there are carried out mechanical processing operations for molded steel and cast-iron pieces, or iron and non-ferrous tools din– planning, milling, drilling, turning, grinding, slotting, gear teething, fluting, etc. - gear teething for conical parts, execution of tools both for internal use or for third parties.

(16) The production activity of SC MECANICA SA is carried out in four industrial spaces, having a total built area of 56,110 sqm. Besides these, the company has also an administrative building, storage spaces etc.

(17) SC MECANICA SA produces and trades the following products:

- a. Car-bodies
- b. trailers
- c. semi-trailers
- d. tractors for yard-use

(18) The Commercial sector of Mecanica Marsa Factory, of which division SC MECANICA SA Marsa resulted, was designed function of the planned economy that existed before 1989 and taking into account the specialized collaboration within Council for Mutual Economic Assistance - CMEA. The designed capacity consists mainly of an annual production of 1,050 semi-trailers, 105 auto trailers, 3,150 agriculture trailers, 5,750 car-bodies. The specialized sector for military production is not anymore part of SC MECANICA SA.

(19) The number of employees of SC MECANICA SA decreased from 947 persons in 2000, to 870 persons in 2002, and in 2003 reached at 537 persons.

(20) The economic – financial results recorded by SC MECANICA SA Marsa, based on the data from the accounting balance sheets of the last 3 years, prior to the privatization, are the followings:

Table no. 3 The economic –financial results based on the data included in the balance sheet

2001	2002	2003
Turnover (thousands ROL)		
175,079,513	150,301,220	171,623,438
Profit/Loss (thousands ROL)		
517,715	- 44,005,224	-40,485,358

Source: Notification form

As results from the presented data, in 2001 the company records a severe decrease of the profit, after which, beginning with 2002, SC MECANICA SA Marsa records losses.

4. DESCRIPTION OF THE PRIVATIZATION PROCESS

(21) In order to privatize SC MECANICA SA Marsa, in 2002, APAPS decided to sell, based on improved and irrevocable final offers, the majority shares package owned by the State at SC MECANICA SA. The shares percentage offered for sale was 83.1638 %, having a shares number of 2,743,726.

The advertisement was published on the 26.10.2002, in the following news papers:

- The Wall Street Journal;
- Adevărul;
- Monitorul de Sibiu;
- Romania Magyar Szo;
- Nine O' Clock.

(22) The dossier was bought by one tenderer, represented by the Employees Association PAS - MECANICA MÂRȘA together with the German company OEHLER MASCHINEN, as co-tenderer, represented legally by its owner Mr. Manfred Oehler. The opening of the tender took place on 18.12.2002.

(23) The Shares Buying – Selling Contract no. 9/14.03.2003, was closed with the following conditions assumed by the Buyer:

- during the investment period, the company must achieve a minimum of 70% of the turnover of the main activity objective;
- must assume all the rights and obligations resulted from the Collective Labour Contract;
- not to decide the voluntary winding up of the Company;
- to ensure the achievement of all environmental obligations and provisions according to the conformity program, annex to the environmental advise for privatization;
- to invest in the company, for a period of 5 years, an amount of USD 340,000 in order to achieve technological investments and working capital;
- to invest for environmental protection USD 4,500, for a period of one year, beginning with the date when the property right was transferred over the shares.

(24)²

(25) The transfer of the property right over the shares was achieved on 30.05.2003.

5. STATE AID ASSESSMENT OF THE MEASURES – ARE THE MEASURES STATE AID?

(26) The criteria, which allow to be established if a measure is State aid, are presented in art 2 (1) of Law no.143/1999 on State aid, with subsequent amendments and completions. According to the Law, the State aid represents any measure of support from the State or from the local administrative authorities, or from the resources of the State or of the local administrative authorities, regardless of its form, that distorts or threatens to distort competition, through favouring certain undertakings, the production of certain goods or the provision of certain services or affects the trade between Romania and the Member States of the European Union is considered incompatible with a normal competition environment.

² Confidential data

(27) The financial support granted to SC MECANICA SA Marsa and notified by AVAS consists in the State revenues renouncement; therefore there are involved State resources.

(28) The measures for financial support granted under Law no. 137/2002 regarding several measures for accelerating the privatization, with subsequent amendments and completions, are addressed only to the undertakings that follow to be privatized, among which SC MECANICA SA is. Thus, the financial support granted to SC MECANICA SA has a selective character.

(29) Through the support financial measures granted, SC MECANICA SA is economically advantaged, the company being exempted from the payment of some debts due to its budgetary creditors, as well as from the payment of interest rates and delay penalties related to the outstanding budgetary obligations. The granting of these facilities has a favorable effect over the economic and financial indicators and over the cash-flow. Thus the company is advantaged in comparison with its competitors.

(30) The granting of financial support to SC MECANICA SA creates the premises for the potential distortion of competition on the relevant markets, as the company is helped to survive on these markets. In addition, there is no doubt that the financial support granted to SC MECANICA SA may affect the trade with the Member States as long as the company's products compete, especially on the Romanian market, with similar products of the companies from the European Union. Another part of the products of SC MECANICA SA are to be exported.

(31) In conclusion, the financial support measures are considered State aid and fall under the provisions of Law no. 143/1999 on State aid, with further modifications and completions.

6. COMPATIBILITY WITH STATE AID LEGAL BASE

(32) Article 2 of the Law no. 143/1999 on State aid, with further modifications and completions, stipulated that the State aids granted by the State or from State resources that distort or threaten to distort competition and affect the trade with the Member States are incompatible with a normal competitive environment.

(33) The State aid objective is the restructuring of SC MECANICA SA Marsa in order to restore its viability until the end of the restructuring period. If the conditions stated in the Regulation on State aid for rescue and restructuring aid in difficulty are observed, the State aid may be considered compatible.

(34) The restructuring aid is conditioned by the implementation of a restructuring viable and coherent plan, demonstrating the long term viability of the company. To this effect, the Regulation states that the restructuring usually involves one or more of the following elements: the company's re-organization and rationalization on a more efficient base, generally implying the retreat from actions that are generating loses, the restructuring of the existing activities that may become again competitive and sometimes the diversification towards new and profitable activities. In general, the industrial restructuring must be accompanied the financial restructuring (capital injections, reduction of debts degree, etc.).

(35) The Competition Council evaluates the State aid granted to SC MECANICA SA, in accordance with the criteria stipulated in the Regulation on State aid for rescuing and restructuring firms in difficulty, published in O.G. no.1215/17.12.2004, and issued in the application Law no. 143/1999 on State aid, with further modifications and completions. As to be considered compatible with a normal competitive environment, the State aid must fulfill the criteria set in the above mentioned Regulation.

7. ELIGIBILITY OF SC MECANICA SA MARSA – FIRM IN DIFFICULTY

(36) In order to benefit of State aid in accordance with the Regulation State aid for rescuing and restructuring firms in difficulty, the company must be in difficulty. According to the Regulation, the Competition Council considers that a company is in difficulty when it is not capable to cover its loses either from its own financial resources or from resources got from owners/shareholders or creditors, and which in the absence of an exterior intervention of public authorities, will almost lead on short or medium term to its economic market exit.

(37) In article 2 (2) letters b) and c) of the Regulation State aid for rescuing and restructuring firms in difficulty, a joint-stock company is considered as being in difficulty when mote than half of its own capital, as the accounting evidence of the company show, and more than quarter of this capital was lost during the 12 months, and a company, irrespective of its legal for, is considered in difficulty when it fulfills the conditions the allow the application of the procedure concerning the legal reorganization and the bankrupt.

(38) To this effect, the Competition Council acknowledges that according to the data of the balance sheet, the own capital of SC MECANICA SA Marsa have registered in 2001 a negative value of ROL 52,513,593 thousand in comparison with the positive value of ROL 92,459,447,000 in 2000, and in 2002 its own capital have registered a negative value of ROL 84,527,372 thousand. Having in regard the difficult situation of the Company reflected by the loss of more that half of its own capitals, by Order of the Minister of APAPS no. 108/11.11.2002, the company was entrusted with special administration, following that SC MECANICA to be privatized. Thus, the Competition Council concludes that the condition stated in article 2 (2) of the Regulation is fulfilled, according to which SC MECANICA SA is considered “firm in difficulty”.

8. HISTORY OF THE COMPANY’S FINANCIAL DIFFICULTIES

(39) Although the company’s turnover remains at a level approximately constant, the operating results of SC MECANICA SA are in decline. Its own assets recorded a negative value even since 2001, due to the cumulated interests and fiscal penalties afferent to the previous years and the overdue budgetary obligations caused by the lack of liquidities. In 2002, the cumulated losses exceed the value of the social capital and the value of the reserves, which means that the company was almost in insolvency. Under these conditions, APAPS, as a majority shareholder, decided to privatize the company.

(40) Causes leading to the fact that the company is in difficulty are the followings:
- long products fabrication cycle, that may last up to 1 year for the auto- tilting trailers of 60 tones, correlated with the high inflation during 1990 – 2002;

- losing the traditional outlets by the dissolution of CMEA, as well as introducing the embargo for Iran and Iraq, countries with which the Company had important trading relations;
 - entering of massive volumes of similar products from import, new and second-hand, without taxes;
 - contracting some credits in foreign currency with high interests (13 – 14%), for making investments necessary for carrying out in normal conditions the production process;
 - the unpredictable increase of the raw-material prices, materials and fuels, as well as utilities.
- One of the most important suppliers is SIDERURGICA Hunedoara (heavy and medium laminated), ISPAT SIDEX Galati (sick iron plate), ARTROM Slatina si SILCOTUB Zalau (round pipes), INDUSTRIA SARMEI Campia Turzii (thin laminated, cables for traction) etc.;
- for not amplifying the social problems on the area, the Company was obliged to develop a social protection policy, having supplementary salary expenses by maintaining an over-number of personnel (around 400 employees).

(41) Taking into consideration this difficult situation, APAPS decided to grant facilities at the privatization of the Company, conditioned by the implementing of some restructuring measures. According to the information contained by the APAPS notification, the dossier drawn-up at privatization contained information for the potential investors that payment facilities for budgetary obligations will be granted. Subsequently, these facilities were taken into account when negotiations with the admitted tenderer took place.

(42) The Investors committed to contribute to technological, technical and environment protection restructuring in amount of ROL 77,656.2 mil. Moreover, the investors contribute at achieving the restructuring program with the amount of ROL 59,500 mil. for achieving certain organizational measures.

(43) The State contribution to the company's restructuring is of ROL 238,935.1 mil. The State contribution refers exclusively at the historical debts of the company, cumulated until 31.12.2002, these following to be exempted from payment.

9. CRITERIA WICH MUST BE FULFILLED FOR GRANTING STATE AID

- (44) The measures mentioned in paragraph 2.2. above will
- Restore the long term viability of SC MECANICA Marsa SA
 - Avoid undue distortion of competition
 - Be proportional to the costs and benefits of restructuring
 - Respect "the first time, last time" principle
 - Confirm a commitment by Romania to ensure the fulfillment of the restructuring plan and the monitoring of it's progress by the Competition Council

10. DESCRIPTION OF THE RESTRUCTURING PLAN

(45) The company elaborated a complex restructuring program, containing measures of³

(46) The restructuring of SC MECANICA SA focuses on four major directions:⁴

(47) The Restructuring Plan submitted by AVAS contains⁵

(48) The restructuring plan elaborated together with the buyer and AVAS covers the period of⁶. Synthetically, the measures covered by the restructuring plan are presented below:

Table no. 4 Measures contained by the Restructuring Plan of SC MECANICA SA-Synthesis⁷

(49) Carrying out the restructuring program needs a financial effort of⁸, and this plan will restore the SC MECANICA SA Marsa to viability in⁹ (at the end of the restructuring plan).

10.1. RELEVANT MARKETS

(50) SC MECANICA SA operates on the markets for producing and trading trailers, semi-trailers and car-bodies. The sales of the Company on the internal market were of ROL 130.3 billions in 2002 and of ROL 123.1 billions in 2003. These values were achieved mainly out of selling semi-trailers, auto trailers, agriculture-trailers and spare parts for these. The tractor for yard-use is produced only by request and is destined exclusively to the external market. This is a small tractor, equipped with equipment for cleaning the garbage. In 2002 the company produced 20 small tractors.

(51) According to the market research annexed to the restructuring plan of SC MECANICA SA, the market shares owned by the company is:.....¹⁰

(52) The main competitors of SC MECANICA SA Marsa are:.....¹¹

(53) In 2002, the weight of the exports in the total sales was of approx.....¹². The main outlets.....¹³

(54) The main beneficiaries of the products SC MECANICA SA MÂRȘA :.....¹⁴

³ Confidential data

⁴ Confidential data

⁵ Confidential data

⁶ Confidential data

⁷ Confidential data

⁸ Confidential data

⁹ Confidential data

¹⁰ Confidential data

¹¹ Confidential data

¹² Confidential data

¹³ Confidential data

¹⁴ Confidential data

(55) Out of the data analysis during 2000 – 2003 it is observed that the clients prefers the import products, due to the payment facilities granted by companies which commercialize similar products, facilities that SC MECANICA SA cannot grant due to the lack of financing. These facilities consist of selling all types of trailers and semi-trailers in leasing system.

10.2. Organizational and managerial restructuring

(56) The organizational and managerial restructuring contains the following measures:

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(57) The reorganization of the process lines, as well as their aggregation and separation on profit centers gives the possibility to a better breakdown of overhead expenditures on groups of products, thus the costs to reflect the objective reality, with direct impact over the selling price and product's quality. Following the reorganization of the process flows, most of the assets of SC MECANICA SA are putting out of function. This has in view 2 objectives: the correlation between the production and selling volume, and the increase of the internal costs generated by their maintenance and repair. The assets put out of function by SC MECANICA SA, consisting of production rooms and outbuildings, as well as tangible assets put out of function, will be capitalized by selling, and will raise ROL 43,500 mill.

10.3. Technical restructuring

(58) The technological investments are assumed by the buyer, amounting 77,196.2 ROL mill. and refers to:

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(59) According to the share selling-buying contract, the buyer committed itself to implement an investment programme in value of 340.000 USD. Besides the investments assumed through the share selling-buying contract, the buyer will make investments in value of 64.300 ROL mill., within the restructuring plan. The investments assumed by the privatization contract consist of:

- purchase of a new sanding cabin with high performance;
- purchase of a new painting cabin, for sizes larger than 6 meters;
- purchase of a new pre-degreasing cabin, for sizes larger than 6 meters;
- endowment of processing centers with AMC variator;
- purchase of devices and independent machines (Karber pre-wash, AODD pump, MELVI blowpipe, PH-neutral MTV installation);
- completion, modernization and replacement of the PC network, for its updating to the modern requirements for designing, assisting, IT endowment of production and organizing the company;
- purchase of transport equipment by financial leasing;
- modernization of heating system, for improving the working conditions

¹⁵ Confidential data

¹⁶ Confidential data

10.4. Financial restructuring

(60) At the time of privatization, apart from the other restructuring measures in the restructuring plan, the company needed financial restructuring in order to function normally

(61) In the case of SC MECANICA SA Marsa, financial restructuring comprises financial support granted by the State upon privatization, consisting in delays and write-offs for due payments to the State budget, local budgets and AVAS, as well exemptions from the payment of supplementary charges and penalties for payment delay afferent to obligations, facilities granted under Law no. 137/2002, in total value of ROL 238,935.1 mill. As well, for achieving the financial restructuring, the company contributes with ROL 96,290 mill., by loans contracted on the Romanian capital market, under market conditions, with mortgage guarantees or with buyer's guarantee, as well as by sales of assets and stock capitalization.

(62) By the Restructuring Plan, the company forecasted in a realistic way the sources for financial restructuring for the next period, based on its own resources, on one hand, and on the buyer's own sources, on the other hand which will ensure investments in technology and environment protection absolutely necessary to the activity.

(63) The Restructuring Plan, through the financial restructuring component, gives the possibility to increase the cash-flow and provide for a constant cash-flow, which will make easier the financial activity of the company. Thus, the company will be able to pay the current debts towards the State and to allocate the necessary liquidities for carrying out the investments planned and necessary, in view of developing and sustaining the production program in the future.

(64) The financial restructuring comprises the following measures:

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10.5. Restructuring measures for environmental protection

(65) According to the purchase/sale contract, the investments for environmental protection have to be made by the buyer, in total amount of 460 million ROL. These investments are used for fulfilling the environment obligations and the measures from the conforming programmes in the environment letter of advice. The environment letters of advice include environment obligations regarding protection of ground and atmosphere, and discharge of tail waters. To this purpose the company will connect the sewerage pipe network to the AVRIG cleaning plant, according to the environment regulations currently into force.

Table no. 9 Restructuring measures for environmental protection

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¹⁷ Confidential data

¹⁸ Confidential data

11. RESTORING THE LONG TERM VIABILITY OF THE COMPANY

(66) The difficulties that SC MECANICA SA have faced after 1989 lead to the significant restriction of the activity as well as of the number of employees while important debts to the State budget were registered. To these debts, delay increases and penalties were added that exceeded the value of due and unpaid debits. Currently, the company's production does not exceed 20% of the production in 1989. Due to these reasons, the number of employees decreased at appx. 10% as compared to 1989.

(67) In 2003, SC MECANICA SA was privatized. In order to overcome the difficult situation, the company elaborated together with the Buyer (the Employees Association PAS and the company OEHLER MASCHINEN) and AVAS, a restructuring program for the period 2003-2008. The synthesis of the measures comprised in the restructuring plan of SC MECANICA SA Marsa was presented in Chapter 10.

(68) The assessment of the restructuring plan and of the way in which it leads to the restoring on long term of the company's viability has in view the provisions of article 13 of the Regulation State aid for rescuing and restructuring firms in difficulty.

(69) According to the article 13 the Regulation State aid for rescuing and restructuring firms in difficulty, the granting of a restructuring State aid is conditioned by the implementation of a restructuring plan. The evaluation of the State aid by the Competition Council is based on this restructuring plan. The restructuring plan which must be as short as possible in time has to contain the abandon of activities that registered losses and to offer the company the viability on long term, allowing it to function with its own resources. The restructuring plan must to be based on a realistic appraisal of market conditions, the restoring of viability having to result mainly from internal measures contained by it, as well as from taking into consideration the extern factors such as price and demand variation, factors on which the company has no determinant influence.

(70) The restructuring plan of SC MECANICA SA starts from the technical - economic data that reflects the company's activity in the period prior to privatization. This plan was elaborated as a result of a diagnosis that shows the strong points and the weak points of the company, the circumstances that led to the difficulties the company faces.

(71) The strategy of SC MECANICA SA aims at preserving the strong points, such as: tradition and competence, renowned in the manufacture of trailers, semi trailers, car bodies, over 30 years experience in tool construction for road and agricultural transport, having its own department for computer-assisted technological design, having mobility and own transportation capacity for supply, important investments in¹⁹ all these equipments being essential for the activity of the company, a good quality/price ratio, well-trained staff. Moreover, the strategy of SC MECANICA SA aims at limiting and counteracting with appropriate measures the weak points, such as: the loss of traditional markets, due to the disappearance of the Council for Mutual Economic Assistance - CMEA/Comecon and the embargo on Iran and Irak, countries with which the company had important commercial agreements, lack of financial resources to bring up-to-date the company, especially the process of cutting-pressing and mechanic processing, competition

¹⁹ Confidential data

from import products, with superior quality, insufficient endowment to generalize the IT system.

(72) The enforcement of the measures provisioned by the restructuring plan is foreseen to improve the financial - economic indicators in the period 2003-2008, as shown in the table below. The company and the Buyer, as well as the State, through facilities granted to the company for payment of budgetary obligations, will contribute to this enforcement.

Table no.10 Evolution forecast of the financial - economic indicators, after applying the restructuring measures

.....²⁰

(73) As a result of accomplishing the measures provisioned by the restructuring plan, at the end of the restructuring period the company forecasts to reach the following target indicators:

.....²¹

(74) Taking into account the presented data, the Competition Council considers that the proposed restructuring plan will lead to restoring the viability of SC MECANICA SA on a long term.

12. PREVENTING ANY EXCESSIVE DISTORTION OF THE COMPETITION (COMPENSATORY MEASURES)

(75) According to the provisions of art.14 of the Regulation regarding State aid for rescuing and restructuring of firms in difficulty, in order to minimize as much as possible the negative effects that the State aids granted have on the competition on the relevant markets, compensatory measures are needed. These measures will be proportional with the distorting effects caused by the aids and especially with the size and relative importance of the company on the relevant markets. The reduction of the company’s presence on the market will be set based on the market research attached to the notification, as well as on any other relevant information, and will be included in the restructuring plan.

(76) SC MECANICA SA has low market quota on the relevant markets on which it operates, respectively²² As a consequence, having in regard the provisions of art. 14 of the Regulation on State aid for rescue and restructuring firms in difficulty that stipulates that the compensating measures will be proportional to the distortion effects of the State aid over competition and, especially, with the size and relative importance of the company on the effected markets, Competition Council considers that in case of SC MECANICA SA no substantial reduction of production capacity is necessary.

(77) The measures to be taken by the company until the end of the restructuring period, in order to avoid the distortion of competition consist in an irreversible capacity reduction, namely fixed assets and goods reduction.

²⁰ Confidential data
²¹ Confidential data
²² Confidential data

(78) The assets to be wind-up due to the production activity reduction consist in production shops and annexed buildings, as follows:.....²³

The accounting value of the assets winded-up is ROL 40,000 million.

(79) Following the activity reduction at the aforesaid objectives, along with the production shops, several pieces of the relevant equipment will be winded-up. The accounting value of the fixed goods winded-up is ROL 3,500 million. The fixed goods consisted in: lathes, cutter machineries, drilling machineries, abrading machineries, clamps etc.

(80) This irreversible reduction of capacity is a part of the restructuring plan. The irreversible reductions of viable capacities consist in 4.1% for the production of semi-trailers, with 11.1% for auto-trailers, with 3.7% for agriculture-trailers and with 36.5% for car-bodies, in comparison with the level of 2002. Out of the capacities winded-up, a part will be sold and the other one destroyed and sold as scrap-iron.

(81) By the restructuring programme, SC MECANICA SA does not increase its market shares, intending to maintain the market segment where it is currently active.

(82) There are significant differences between the designed production capacity of SC MECANICA SA and the existing functioning one. The company does not intend to increase its production capacities, but to better use the remaining capacities.

(83) The functioning production capacities and their level of utilisation between 2000-2002 are presented bellow:

.....²⁴

(84) After the enforcement of the measures provided in the restructuring plan, capacities production and their level of utilisation are presented bellow:

.....²⁵

(85) By the restructuring programme, SC MECANICA SA intends to increase the level of utilization of the production capacities. Thus, the capacities level of utilisation is going to increase from nearly 60% in 2002, up to 90% in 2008 as the company committed itself, according to the restructuring programme, to reduce its production capacities with 4.1% for semi-trailers, with 11.1% for auto-trailers, with 3.7% for agriculture-trailers and with 36.5% for car-bodies, in comparison with the level of 2002.

(86) Having in view the aforesaid, the Competition Council acknowledges that the State aid is to be used only for restoring the company's viability. The Council does not allow the beneficiary to increase its production capacities during the enforcement of the restructuring programme.

²³ Confidential data

²⁴ Confidential data

²⁵ Confidential data

13. AID LIMITED TO MINIMUM NECESSARY (PROPORTIONALITY OF THE AID)

(87) In accordance with art.15 of the Regulation on rescue and restructuring firms in difficulty, the State aid intensity and quantum need to be limited to what is absolutely necessary for allowing the restructuring, depending on the company's and shareholders' existing financial resources. The State aid benefiting company must significantly contribute to the restructuring programme, using own resources, including the sale of unessential assets or external loans obtained under normal market conditions. According to art.15(2) of the Regulation, for large undertakings a contribution of at least 50% is considered adequate.

(88) The total restructuring cost of SC MECANICA SA is ROL 478,481.3 million and consists of:

- Organisational restructuring cost – ROL 65,600.00 million
- Technological restructuring cost – ROL 77,196.20 million
- Environmental restructuring cost – ROL 460.00 million
- Financial restructuring cost – ROL 335,225.10 million

(89) The total restructuring cost of SC MECANICA SA, amounting ROL 478,481.3 million, is supported from the following resources:

- SC MECANICA SA Marsa own resources – ROL 102,390.00 million
- Investor's capital injection – ROL 137,156.20 million
- State aid – ROL 238,935.10 million

(90) From the total restructuring cost in amount of ROL 478,481.3 million, 21.4% will be financed from the company's own resources, 28.7% from the majority shares buyer's own resources and 49.9% from State aid.

(91) Its own contribution of 50.1% for covering the restructuring cost is assured by:

- Capital injection of majority shareholders – Association PAS and OEHLER MACHINEN;
- Income from capitalization of tangible assets and goods;
- Income from capitalization of stocks;
- Credits from the Romanian capital market, in the conditions of the market, with the buyer's guarantees.

(92) The State aid intensity calculated as ratio between the value of the State aid and the total restructuring cost is of 49.9%.

(93) Having in view the above mentioned aspects, the Competition Council considers as significant its contribution of 50.1% to sustain the restructuring costs, this contribution demonstrating confidence in the practical value of restructuring and the fact that the amount and the intensity of the State aid were strictly limited to allow the restructuring in regard to the existent financial resources of the company and of the majority shareholders. Thus, the company does not receive a surplus of liquidities that could be used for aggressive activities to distort the competition on the market.

14. OBSERVANCE OF “FIRST TIME, LAST TIME” PRINCIPLE

(94) SC MECANICA SA Marsa did not ever receive a restructuring aid. Thus, the provisions of article 24 of the Regulation on State aid for rescue and restructuring firms in difficulty, stating that the rescue and restructuring aid for firms in difficulty must be granted only once, is observed.

15. MEMBERSHIP TO A GROUP OF COMPANIES

(95) According to the provisions of art.2 (5) of the Regulation regarding State aid for rescuing and restructuring of firms in difficulty, a company belonging to a group is not normally eligible to receive State aid for rescuing and restructuring, except for the case when it can be proved the financial difficulties belong to the company itself are not the outcome of an arbitrary allocation of costs within the group and that the said difficulties are much too serious to be handled by the group itself.

(96) The fiscal facilities intended to be granted to refer to historical debts - as an effect of the economic results obtained in the years prior to the moment when the majority equity shares were sold, therefore these debts belong to SC MECANICA SA.

(97) As a result of privatization and the conclusion of the shares purchase-sale contract, the new owner of SC MECANICA SA Marsa is the Employees' Association PAS MECANICA Marsa and OEHLER MASCHINEN, which hold together 83.164 % of the company's equity shares. As shown in Chapter 4, the documents submitted by AVAS indicate that, although the Employees' Association PAS – MECANICA Marsa and OEHLER MACHINEN are registered at the Trade Registry Office - Sibiu Court as being a single shareholder, the contribution of Employees' Association PAS – MECANICA Marsa to the payment of the shares and to the investments assumed in the contract is of 80%, while the contribution of OEHLER MASCHINEN is only of 20%. Under these circumstances, OEHLER MACHINEN holds approx. 16% of the SC MECANICA SA shares.

(98) AVAS supplied data regarding the financial and economic situation of OEHLER MACHINEN, as presented in the bank financial statement issued by Volksbank Offenburg, submitted in order to acquire a part of SC MECANICA SA. The document states that OEHLER MACHINEN recorded a net revenue of EUR 261.800 in 2000, and EUR 312.500 in 2001, for an average of approx. ROL 11.000 million/year; the debts of MECANICA SA at the time of privatization were of ROL 238.935,1 million.

(99) Although the financial situation of OEHLER MACHINEN is a good one, Competition Council notes that the majority stockholders (Employees' Association PAS – MECANICA Marsa, and OEHLER MACHINEN) could not cope with the financial difficulties of SC MECANICA SA as well as with the restructuring of the company without a consistent intervention of the State; the company's debts to the State budget, local budgets and AVAS are in total amount of ROL 238.935,1 million. In the shares purchase/sale contract the investors agreed to make a contribution to the technological, technical and environmental restructuring, in total amount of ROL 77.656,2 million. Moreover, the investors contribute to the restructuring plan with ROL 59.500 mill. for organizing measures such as: participation to fairs and exhibitions, national and international, staff training in Germany - 240 training sessions with most of the expenses paid by OEHLER MACHINEN. If comparing with the

financial resources of OEHLER MACHINEN and of the employees, members of the PAS Association, this contribution is a very significant one.

16. COMMITMENTS TO ANNUAL MONITORING AND REPORTING

(100) In accordance with article 18 the Regulation on State aid for rescue and restructuring firms in difficulty, the Competition Council permanently monitors the implementation of the restructuring plan so that the company will not fail in fulfilling the objectives established.

(101) The Competition Council will monitor the implementation of the restructuring plan until the end of the period to assure itself that increases of the production capacities are not registered, major deviation from the achievement of restructuring measures and that the State aid will not lead to the creation of complementary liquidities to be used for other activities contained in the restructuring program.

17. CONCLUSIONS

(102) Having in view the above mentioned aspects, the Competition Council concludes that the individual State aid intended to be granted to SC MECANICA SA Marsa is compatible with a competitive normal environment and does not significantly affect the trade with the Member States of the European Union.

(103) The non-granting of the State aid would lead, according to AVAS, to the winding up of the company, fact that might have the following consequences:

- Collective personnel lay-off, with immediate and lasting effect the increase of the unemployed persons in the area ;
- Increase of the budgetary expenditures with the unemployment allowance, support allowance and other forms of social protection to the unemployed persons which from the tax payers are becoming consumers of financial resources;
- The decrease of the quantum of the contributions paid by the company for the employees;
- Non-recovering of all the debts to the budgetary creditors and third parties;
- Reduction of the activity of raw materials and materials suppliers with collaboration relations with SC MECANICA SA Marsa.

DECIDES

Art. 1. The financial support measure notified by the Authority for State Assets Recovery for SC MECANICA SA Marsa represents a State aid according to article 2(1) of the Law no. 143/1999 on State aid, with further modifications and completions.

Art. 2. Based on the provisions of article 12 (2) letter c) corroborated with article 14 (1) letter e) of the Law no. 143/1999, with further modifications and completions, the restructuring aid

that is going to be granted to SC MECANICA SA Marsa at privatization, is authorized with the condition to observe the provisions of articles 3 and 4 of the present Decision.

Art. 3. The company is compelled to fully implement the assumed restructuring plan.

Art. 4. The company shall reduce the production capacities until 2008 according to the assumed restructuring plan.

Art. 5. If the conditions imposed by the present decision are not observed, the provisions of article 13 of the Law no. 143/1999 on State aid, with further modifications and completions, shall apply.

Art. 6. The value of the State aid that is going to be granted is of ROL 238,935,093,951.

Art. 7. The present decision becomes applicable since its communication.

Art. 8. In accordance with the provisions of article 24 of the Law no. 143/1999 on State aid, with further modifications and completions, the Authority for State Assets Recovery shall submit to the Competition Council information on the State aid granted in order to inventory and monitor. In addition, the Authority for State Assets Recovery shall submit to the Competition Council the annual reports on the implementation of the restructuring plan. The first report shall be submitted within 6 months from the issuance of the decision. The following reports must demonstrate that the company observed the compensatory measures concerning the reduction of the production capacities imposed by the present decision.

Art. 9. In accordance with article 29 of the Law no. 143/1999 on State aid, with further modifications and completions, the present decision can be appealed by the interested parties in the Appeal Court, Administrative Contentious Department, within 30 days from the communication.

Art. 10. The present decision shall be communicated by the General Secretary of the Competition Council to:

- The Authority for State Assets Recovery, 50, Cpt. Av. Alexandru Serbanescu street, sector 1, Bucharest;
- SC MECANICA SA Marsa, 1, Uzinei street, Localitatea Marsa, Sibiu, post code 555250.

PRESIDENT

MIHAI BERINDE