

DECISION OF THE COMPETITION COUNCIL
no. 130 as of 14.07.2005

regarding the state aid notified by the
Authority for State Assets Recovery granted to
S.C. Subansamble Auto S.A. Sfantu Gheorghe

THE COMPETITION COUNCIL,

Based on the provisions of the Decree no. 57/2004 for the appointment of the Competition Council members,

Based on the provisions of Competition Law no. 21/1996, published in Official Journal of Romania, Part I, no. 88 on 30 April 1996, amended and completed by Emergency Government Ordinance no. 121/2003 approved by the Law no. 184/2004,

Based on the provisions of Law no. 143/1999 on state aid with the subsequent modifications and completions,

Based on the provisions of European Agreement establishing an association between Romania, and European Communities on one side and the Member States of those, on the other side, approved by Law no. 20/1993, published in Official Journal of Romania, Part I, no. 73 on 12 April 1993,

Based on the provisions of the Regulation regarding state aid for the rescue and restructuring of companies in difficulty, published in the Official Gazette of Romania, Part I, no. 1215 of 17 December 2004,

On the following grounds,

1. DESCRIPTION OF THE LEGAL FRAMEWORK

1.1. NOTIFICATION PROCEDURE

(1) By address no. VP₄/1100/18.05.2005, filed with the Competition Council no. RS-AS no. 17/20.05.2005, the Authority for State Assets Recovery (hereafter AVAS) has notified, on behalf of all state aid grantors, respectively the Ministry of Public Finance (The National Agency for Fiscal Administration – hereafter ANAF), the Ministry of Labor, Social Solidarity and Family, The National House of Health Insurance, based on art. 6 of Law no. 143/1999 on state aid, with the subsequent modifications and completions the individual state aid for the restructuring of S.C. SUBANSAMBLE AUTO S.A. Sfântu Gheorghe, in the context of its privatization.

(2) By address DAAS/462/23.05.2005 supplementary information has been requested from AVAS regarding the relevant market where the state aid beneficiary is active and the market share held by it, the circumstances leading to difficulties the company is confronted with, as well as other information related to the restructuring program of S.C. SUBANSAMBLE AUTO S.A. Sfântu Gheorghe. The notification became effective as of the date when supplementary information was accurate and complete, respectively 06.06.2005.

1.2. LEGAL BASIS FOR GRANTING THE STATE AID

- Law no. 137/2002 art. 18, regarding some measures for the speeding up of the privatization, with the subsequent modifications and completions;
- GD no. 577/2002 art. 281, regarding the approval of the Methodological Norms for the application of the GEO no. 88/1997 regarding the privatization of commercial companies, with the subsequent modifications and completions;
- Law no. 609/2003 for the approval of GO no. 86/2003 regarding the settlement of some financial and fiscal measures;
- Law no. 191/2004 regarding the approval of GO no. 36/2002 for the modification and completion of Law no. 137/2002.

1.3. DESCRIPTION OF THE PRIVATIZATION PROCESS

(3) The privatization of the commercial company was carried out on the basis of *EGO no. 88/1997 regarding the privatization of commercial companies*, with the subsequent modifications and completions, of *the Methodological Norms for the application of the GEO no. 88/1997*, approved by GD no. 450/1999, modified by GD no. 443/2001 and completed by GD no. 550/2001, of the *Law for the speeding up of the privatization no. 137/2002* and of the *GD no. 268/21.03.2002 regarding the privatization strategy of SC SUBANSAMBLE AUTO SA Sfântu Gheorghe*, included in the PSAL 1 program.

(4) The privatization process of the company was launched by publishing the sale announcement of a number of 3,072,544 shares on 28.03.2002. The publicity for the sale of the shares held by APAPS in the company was made in the dailies Bursa, Cuvantul Nou (Covasna) and Măgyar Szó (Covasna).

(5) Following the sale announcement, one presentation document was bought by ARC (The Association of the Employees and Management) Sfântu Gheorghe and an offer submitted by it to purchase the shares sold by APAPS. Subsequent to the analysis of the offer and its observance of the privatization criteria, the privatization agreement was signed on 14.06.2002 with Asociația ARC Sfântu Gheorghe who acquired the majority stake of 98.68 % of the shares.

2. PRESENTATION OF THE BENEFICIARY S.C. SUBANSAMBLE AUTO S.A. SFANTU GHEORGHE

(6) The state aid Beneficiary is S.C. SUBANSAMBLE AUTO S.A., set up in 1997, by spin off from S.C. ISAMA S.A. The majority of the shares is held by Asociația ARC Sfântu Gheorghe since 2002, the year of privatization.

(7) As of the date of the signing of the share buy-sell agreement (14.06.2002) the company had shareholders' equity registered with the Registry of Commerce of ROL 77,841,325 thousand divided in 3,113,653 shares with ROL 25,000 face value.

(8) Since the date of signing the share buy-sell agreement, the shareholders' equity has been increased by ROL 15,558,675 thousand, so as on 29.06.2004 the company had shareholders' equity of ROL 93,400,000 thousand divided in ROL 93,400,000 shares of ROL 1,000 face value, held as presented below:

Table no. 1 – Ownership structure at S.C. SUBANSAMBLE AUTO S.A.

SHAREHOLDERS	EQUITY HOLDINGS	
	Shares held	Percentage held (%)
Asociația "ARC" Sfântu Gheorghe	92,263,408	98.783
Other private shareholders	1,136,592	1.217
Total	93,400,000	100.0000

Source: AVAS

The increase of the shareholders' equity has been carried out in order to meet the obligations assumed by the Buyer through the share buy-sell agreement.

(9) From the analysis of information presented in the notification form resulted the fact that at the moment of the share ownership transfer the company had 249 employees (at present the company has 140 employees) and the turnover related to the year prior to the privatization (2001) was of ROL 106,644,000,000 the equivalent of EURO 3,285,499¹. We mention that due to the fact that the majority of the shares was acquired by the Association of the employees and by the management of the company, respectively ARC Sfântu Gheorghe, S.C. SUBANSAMBLE AUTO S.A. is an autonomous entity therefore the number of employees and turnover were based exclusively on its financial position. Concluding based on the above, the company falls under SME category, as defined by the *Regulation regarding state aid for SMEs*, with the subsequent modifications and completions.

¹ The NBR exchange rate for EURO/ROL on 23.07.2002 – the date of the share ownership transfer was of ROL 32,459 lei/1 EURO.

(10) The core business of SUBANSAMBLE AUTO is the manufacturing of vehicle components and accessories. The main product range contains:

- mechanical gearboxes for trucks, trailers and autotractors in the 20-200 dNm range;
- distribution boxes G 450, G550, G 800 and power and ancillary sockets for supplementary actions;
- non traction front axles with a bearing of 2,000-7,000 dNm ;
- spare parts.

(11) The company has ancillary activities and services, as follows:

- semifinished cast and forged products;
- current and capital repairs for domestic needs and third parties;
- discharge of services.

(12) The evolution of the company's turnover during 1999-2002 is presented as follows:

Table no. 2 – Evolution of turnover of S.C. SUBANSAMBLE AUTO S.A. during 1999-2002

	-ROL thousand-			
	1999	2000	2001	2002
Turnover	88,824,000	89,336,000	106,644,000	115,215,141
Turnover in Romania	86,584,100	88,434,700	100,101,200	105,380,241
Turnover of the Romanian market/total turnover	97.47%	98.99%	93.86%	91.46%

Source: AVAS

(13) From the structure of turnover it can be observed that the company works mainly for the domestic market (approx. 94% in 2001) the main part being held by spare parts, approx. 65%, followed by gearboxes (approx. 22%). The remainder of the products have non significant shares and even decreasing in the total turnover (approx. 2-3%).

3. DESCRIPTION OF THE MARKET

(14) By the specificity of the products, the company until 1990 held a significant position on the domestic market of Romania in the field of manufacturing gearboxes, distribution boxes, non traction front axles and accessories. Later on, Romania's market in the field of vehicle transportation means was penetrated by large truck companies, both with products and parts similar to those manufactured by the company. These products have won an important place on the Romanian market, being of higher quality, resulted from industrial processes of superior technology.

(15) Although the price of the imported products was higher, these products had success due to their quality. In these circumstances, SC SUBANSAMBLE AUTO SA, by multi-directed measures followed to make the activity more efficient and to improve product

quality so as in 2001 the company was certified by IQNet/CISQ/SICIM/SRAC with the certificate no. 499, regarding the implementation of the Quality System according to ISO 9001.

(16) The relevant market of the company is identified as the market of the main product groups:

- mechanical gearboxes for trucks, trailers and autotractors in the 20-200 dNm range;
- distribution boxes G 450, G550, G 800 and power and ancillary sockets for supplementary actions;
- non traction front axles with bearing of 2,000-7,000 dNm ;
- spare parts.

3.1. The market of mechanical gearboxes for trucks, trailers, autotractors in the range of 20 – 200 dNm

(17) – (19) [....]²

3.2. The market for distribution boxes G450, G550, G800 and of the power and ancillary sockets

(20) - (21) [....]³

3.3. The market for non traction front axles with bearing of 2,000-7,000 daN

(22) [....]⁴.

3.4. The spare parts market

(23) - (27) [....]⁵.

4. MEASURES OF FINANCIAL SUPPORT GRANTED BY THE STATE IN ORDER TO RESTRUCTURE S.C. SUBANSAMBLE AUTO S.A. SFANTU GHEORGHE

(28) At the privatization moment the company needed financial restructuring for the operation within normal parameters of the production, besides the obligations assumed through contract by the buyer.

² Confidential data

³ Confidential data

⁴ Confidential data

⁵ Confidential data

(29) Measures of financial support to be granted to S.C. SUBANSAMBLE AUTO S.A. Sfantu Gheorghe consist in:

a) exemption from payment of :

- past due obligations as of 31.12.2001 to the state budget, up to 87%, representing income tax, VAT, salaries fund quota, amounts owed for not employing disabled persons, special fund for supporting education, stamp fees, penalties;
- interest and delay penalties related to obligations past due to the state budget, calculated until the date of the share ownership transfer;
- past due obligations as of 31.12.2001 to the state social insurance budget and to the unemployment insurance budget, up to 87% representing contribution to state social insurance, employer contribution to social insurance, employer contribution to unemployment insurance;
- interest delay penalties, related to past due obligations to the state social insurance budget and to the unemployment insurance fund, calculated until the date of the share ownership transfer;
- interest and delay penalties, related to past due obligations, representing employer contribution to the budget of the National fund of health insurance, calculated until the date of the share ownership transfer;
- interest and penalties of any kind, related to budgetary obligations owed and not paid as of 31.12.2001, calculated from the date of the share ownership transfer until the date of issuing the Common Orders, remained not paid when Law no. 191/2004 entered in force;
- own receivables of AAPPS as of 31.12.2001, up to 87% representing moratory damages calculated delayed payment of dividends.

b) rescheduling for the payment of :

- past due obligations as of 31.12.2001 to the state budget up to 13%, representing income tax, VAT, salaries fund quota, amounts owed for not employing disabled persons, special fund for supporting education, stamp fees, penalties;
- past due obligations as of 31.12.2001 to the state budget representing tax on salaries, tax on salaries revenue, dividend tax;
- past due obligations as of 31.12.2001 to the state social insurance budget and to the unemployment insurance budget, up to 13% representing contribution to the state social insurance, employer contribution to social insurance, employer contribution unemployment insurance;
- past due obligations as of 31.12.2001 to the state social insurance budget and to the unemployment insurance budget representing supplementary pension, individual contribution to social insurance;
- past due obligations as of 31.12.2001, representing employer contribution to the budget of the National fund for health insurance;
- interest and penalties of any kind, related to budgetary obligations due and not paid as of 31.12.2001, calculated from the date of the share ownership transfer until the date of issuing the Common Orders;
- own receivables of APAPS as of 31.12.2001, up to 13% representing moratory damages calculated for the delayed payment of dividends.

(30) Thus, S.C. SUBANSAMBLE AUTO S.A. Sfantu Gheorghe benefited at privatization of payment facilities in amount of ROL 458,741,723,315 from which:

- debt exemptions in amount of ROL 78,062,135,199;
- exemptions of interest and delay penalties in amount of ROL 348,445,422,012;
- payment rescheduling in amount of ROL 32,234,166,104.

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

(31) The financial support measures granted in order to restructure S.C. SUBANSAMBLE AUTO S.A. Sfantu Gheorghe, at its privatization, because the company needed financial restructuring to continue operating within normal conditions.

(32) Facilities consist in the foregoing of the budgetary creditors (Ministry of Public Finance, Ministry of Labor, Social Solidarity and Family, National House of Health Insurance) and AVAS of some future revenues, by granting facilities from payment of obligations to them (exemptions and debt reschedulings) and are granted in order to increase attractiveness at privatization by relieving the company from historical debts.

(33) Analyzing the measures of financial support, the Competition Council has noted that there is no doubt that these are financed from state resources and do not confer an advantage S.C. SUBANSAMBLE AUTO S.A. Sfantu Gheorghe. Also, there is no doubt that the financial measures taken affect trade with the member states of the European Union since the products obtained by the company are sold on the external market, and on the domestic market they compete with similar imported products including from some European countries.

(34) In conclusion, the measures of financial support granted are considered state aids and fall under the Law no. 143/1999 regarding state aid, with the subsequent modifications and completions.

6. ASSESSMENT OF THE STATE AID MEASURES INTENDED TO BE GRANTED TO S.C. SUBANSAMBLE AUTO S.A. SFANTU GHEORGHE

(35) The state aid granted to the commercial company SUBANSAMBLE AUTO is considered individual aid for restructuring and is granted based on restructuring program prepared by the company and the buyer and having as main objective the restoration of the company's viability at the end of the restructuring period.

(36) S.C. SUBANSAMBLE AUTO SA Sfantu Gheorghe has not benefited from state aid for rescue and restructuring.

(37) In 1999-2002, following the missing of the production figures, and the structure of effective contracted production, which did not allow for a uniform workload of production capacities in function and neither for an efficient operating, high unit costs

were incurred considering that in the cost structure an important share is held by fixed costs.

(38) A determining influence in the decline of the company was made by the decrease of the customers' payment capacity given the economic and financial blockage, the reduction of the subcomponents demand from the main users in the assembly sector due to the significant restructuring process involving the main companies in the economy.

(39) To summarize, the difficult economic and financial position of the company at the moment of privatization was determined, in principle, by the following:

- no correlation of the staff with the physical production;
- difficulties in collection from customers due to lack of liquidity of the main beneficiaries;
- continuous decrease of orders on the domestic market which led to accrual of inventory until new markets were identified;
- the continuous decrease of domestic trucks and buses after 1990, the large domestic producers which held over 60% from the company's sales (S.C. Rocar S.A București, S.C. Aro S.A Câmpulung Muscel) drastically reducing activity until bankruptcy (for example, S.C. Rocar S.A. București) or being close to disolution;
- a high worn out and obsolescence ratio of equipments, machines and equipments leading to a low usage yield with high operating costs;
- the lack of financial resources generated irregularities in supplying of raw materials which led to disfunctionalities in the production process;
- low capacity utilization during 1990 until privatization, while maintenance and repairs costs remain principally the same with those at full capacity.

(40) The Competition Council assess the state aid granted to S.C. SUBANSAMBLE AUTO SA Sfantu Gheorghe according to the criteria provided in the Regulation regarding the state aid for rescue and restructuring of companies in difficulty.

6.1. Eligibility of S.C. SUBANSAMBLE AUTO S.A – company in difficulty

(41) In order to be compatible with the normal competitive environment, the state aid must meet all criteria in the above mentioned Regulation. Taking into consideration that the share ownership transfer took place on 23.07.2002, the analysis of the eligibility was based on economic and financial results in the last 3 years prior to privatization.

a) Decrease of turnover

Table no. 4 Evolution of turnover for S.C. SUBANSAMBLE AUTO S.A.

–ROL thousand-			
Indicator	1999	2000	2001
Turnover	88,824,000	89,336,000	106,644,000
Turnover in 1999 comparable prices	88,824,000	64,971,636	59,017,156

Source: AVAS

(42) Analyzing the evolution of turnover in 1999 comparable prices it is noted a decrease of it by approximately 34% from the reference year.

b) Evolution of company profit/losses

(43) A first analysis of the company's financial statements related to 1999-2001 could reveal the fact that in the last three years prior to privatization, S.C. SUBANSAMBLE AUTO S.A. makes a positive result. However, taking account of the fact that increases and delay penalties related to budgetary obligations not paid in due time were booked in off balance sheet accounts, so with no impact on the balance sheet, the real company's position shows a different evolution, as it can be observed in the following table:

Table no. 5 Evolution of profit/losses in 1999-2001 -ROL thousand -

Indicator	1999	2000	2001
Accounting net result	8,708,863	1,950,103	5,520,825
Result if increases and delay penalties were not booked in off balance sheet accounts	-162,316,195	-66,971,393	-44,942,782

Source: AVAS

It can be observed that by including increases and delay penalties in the balance sheet, the company would have posted during 1999-2001 a cumulated loss of ROL 274,230,370 thousand, which would have led to its bankruptcy.

c) Evolution of indebttness ratio and debt repayment

Table no. 6 – Evolution indebttness ratio and debt repayment

	1999	2000	2001
Total debts (balance sheet and off balance sheet)	262,844,111	341,147,194	415,483,437
Equity	-95,394,111	-164,249,194	-210,959,437
Turnover	88,824,506	89,335,508	106,643,625
Indebttness ratio (total debt/equity) - % -	negative	negative	negative
Total debt repayment timing (debts/turnover*360)	1,065	1,375	1,403

Source: AVAS

(44) During the analyzed period it is noticed that the inclusion of interest and delay penalties in the balance sheet leads to the accelerated decapitalization of the company, the total debts surpassing equity approximately 5 times. Even in the case when the analysis is made at the level of 2001, without taking into consideration interest and delay penalties booked in off balance sheet accounts, the debts of the company were higher than equity by 44%, and shareholders' equity by 55%. In these circumstances the timing of debt repayment would have surpassed 1,400 days as compare with approximately 400 days if limited to the balance sheet recordings. Even so, this timing is high and growing during the analyzed period.

d) Evolution of inventories

Table no.7 – Evolution of inventories during 1999-2001

- ROL thousand-

	1999	2000	2001
Inventories	38,287,000	50,831,000	77,675,000
Half-finished, finished and residual products	31,946,000	41,514,000	62,057,000
Turnover	88,824,000	89,336,000	106,644,000
Stocking days	155.2	204.8	262.2
Weight of half-finished, finished and residual products in total inventories (%)	83.4	81.7	79.9
Inventory turnover ratio	155	204.8	262.2

Source : AVAS

(45) Data presented shows that over two years inventories doubled based on half-finished, finished and residual products following the diminishing of the market, the traditional clients having big difficulties, the company being thus obliged to work on stock pending identification of new markets. Thus, while turnover grew in nominal terms with 16.7% in 2002 compared to 1999, inventories more than doubled compared to 1999. This fact is underlined by the high inventory turnover ratio (262.2).

e) Intermediate liquidity

Table no. 8 – Evolution of intermediate liquidity

- ROL thousand -

	1999	2000	2001
1. Current assets	103.737.000	114.870.000	140.357.000
2. Stocks	38.287.000	50.831.000	77.675.000
3. Current assets – Stocks (1-2)	65.450.000	64.039.000	62.682.000
4. Current debts (including off balance sheet debts)	183.283.111	266.816.194	301.713.437
Liquidity (3/4)	0.36	0.24	0.21

Source: AVAS

(46) The analysis shows a liquidity lower than 1, meaning that the company would not have been able to sustain not even its current debts from its own resources. This is more significant as the company's assets do not cover its current debts growing year by year which leads to the increase of arrears.

f) Solvency

Table no. 9 – Evolution of solvency

- ROL thousand -

	1999	2000	2001
Equity	-95,394,111	-164,249,194	-210,959,437
Total liabilities	339,802,038	419,075,291	499,287,425
Solvency (%)	negative	negative	negative

Source: AVAS

(47) From indicators presented above results that the company would not have been able to sustain activity from own resources, given the high indebtedness ratio and lack of liquidity. In these circumstances, of steep decapitalization and insolvency, there is no way of talking about profit and return on investment.

(48) In the context of domestic and external problems of the company, consisting in mismatches of expenses and revenues, loss of markets, increase of customers insolvency, it has come to the situation where the company showed unfavorable evolution of inventories, of receivables and of payable debts, especially to budgetary creditors. Analyzing the financial statements of the company while taking into account the off balance sheet debts it is noted that the impact on the main economic and financial indicators is significant: the company has losses at the end of each fiscal year, equity is negative, assets can not sustain the large volume of debts, high indebtedness ratio, high volume of inventories, all these coupled by the high worn out and obsolescence ratio of the equipments, installations requiring higher expenses; thus, it can be concluded that SC Subansamble Auto SA Sfantu Gheorghe is a firm in difficulty.

6.2. The restructuring plan

(49) Considering the position of the company at the privatization moment, the buyer of the majority stake together with the company have prepared a restructuring plan for the period 2002-2007 containing measures regarding the organizational and technological restructuring, environment protection investments and financial restructuring all these amounting to ROL 757,702 million.

(50) The SWOT analysis as of the privatization of the company, considering the tendencies of the markets where the company operates, has identified the following:

a) strengths:

- from a commercial point of view: the increasing trend of export sales; the potential of satisfying orders domestically; the capacity of the company to adapt to various requests shown by focusing on new product types and services; the capacity to realize unique items;
- from a technical point of view: the technological experience in realizing gearboxes and non traction axles for heavy vehicles; the existence of infrastructure required to carry out the production process; high integration ratio in realizing gearboxes;

b) weaknesses:

- from a commercial point of view: the vulnerability of the company from the outlook of its strategic beneficiaries; the insufficiently developed marketing and advertising activities;
- from a technical point of view: outdated technologies and licenses as compared with the large international producers; high ratio of worn out and obsolete equipments, machines and installations; reduced capacities utilization; high energy consumptions throughout the plant, mainly in casting and forge sectors;
- from an economic point of view: the high indebtedness level to the state; the continuous reduction of turnover in real terms; the reduced profitability coupled with a weak

liquidity; the poor financial balance of the company; over-sizing of the tangible assets compared with the actual needs of the company.

c) opportunities:

- possibility of increase and diversification of the external and domestic market;

a) threats:

- the risk that traditional beneficiaries enter in payment default.

(51) Based on this analysis and on the market study the company's restructuring plan was prepared and entails:

6.2.1. Organizational and managerial restructuring

(52) The organizational and managerial restructuring measures have been designed taking into account the economic difficulties the company is confronted with at privatization in the prospect of the following years given the low level of orders and firm contracts without a stable and certain market ensuring the use of the existing labor force.

(53) The organizational restructuring of the company refers, first of all, to correlating personnel with the production program – forecast to be realized by the company absorbed by the market – by successive layoffs until reaching the required number according to the approved organizational chart. This measure has been already implemented by the company, 109 employees being made redundant between the ownership transfer date until 30.04.2004 (reaching to 140 employees from 249); the cost of this measure amounted ROL 300,125,275, funds from company's own sources. The measure has as economic effect the cost reduction with salaries by ROL 3,243,000,000 in the first year after application.

(54) Another reorganization measure consists in externalizing the ancillary services and departments in order to allow for an efficient load of specific production capacities and the elimination of loss making activities. The measure, with an implementation cost of ROL 100,000,000 borne by the state aid beneficiary has as effect an increase in revenues of ROL 525,000,000.

6.2.2. Technological restructuring

(55) As of the privatization the poor technical endowment of the company determine low products with low qualitative performance, low fabrication yields, high material and energy consumptions, conditions affecting the competitiveness of the products.

(56) Thus, given the fact that equipments, machines and technological equipment are worn out and obsolete (average worn out ratio is of approximately 67-70%) leading to a high dispersion in product quality, the high labor ratio and raw material and materials cost, the low productivity and high consumption of electricity and natural gas, a high volume of investments is required for modernization and optimization of technologies.

(57) The technical and technological investments included in the restructuring program, by resizing and reallocating capacities and endowment with specific modernized equipments, aim at reaching objectives to improve mechanical and functional characteristics of the products, increasing output efficiency and labor productivity, reducing energy consumption, all these with impact on reducing losses and increasing the operational profit.

(58) The measures of technological restructuring of the company and their related costs are presented in Table no. 10.

Table no. 10 – Measures for upgrading technology and related costs

No.	Measure description	Implementation cost (ROL million)
1.	Modernization of machines, tools and other endowments from company own sorces, as follows: grinding machines, lathes and facing sets, milling machines, denticulating machines, purchase of compressors (KAESER DSD 171 si KAESER DSD 351), STEINE-SURFACE ovens, decanter, underground tank, utility vehicle, gearbox shop etc.	178,472
2.	Purchase of two compressors for the gearbox shop	2,000
3.	Investments assumed by the buyer, aiming at improving quality, increasing efficiency, profitability, of which:	49,371
	- finalizing thermo station	2,634
	- endowment with air conditioners for shops	1,993
	- endowment with burners for three forging ovens	3,987
	- electricity metering	661
	- installation for atmospheric control of STEINE SURFACE oven	1,223
	- portable spectograph with carbide potent	991
	- endowment with forge compressors	7,408
	- upgrading of machinery and other endowmwnts	30,474
TOTAL		229,843

Source: Notification form and supplementary information

6.2.3. Environmental restructuring

(59) By the share buy-sell agreement, the Buyer assumed an environmental investment amounting 60,000 USD, respectively ROL 2,098,000,000 over one year from the date of the share ownership transfer. These measures, synthetically presented in the following table – currently fully implemented -, will have, besides the economic beneficial effects for the company, also effects regarding reduction of air pollution, waste water and rehabilitation of the soil.

Table no. 11 Cost of environmental investments for S.C. SUBANSAMBLE AUTO S.A.

- ROL million -

	Measures regarding environmental restructuring assumed by the investor	
1.	Dismantling the underground fuel warehouse	440
2.	Making of concrete platform for ground tankers, în order to retain likely spills	166
3.	Revision of drinking water chlorine installation	44
4.	Preserving sanityzing the galvanizing section	1,402
5.	Repair of wet filter of the thermo-chemical treatment facility	46
TOTAL		2,098

Source: Restructuring program of SC Subansamble Auto SA Sfantu Gheorghe

6.2.4. Financial restructuring

(60) At the privatization moment the company needed financial restructuring for the operation within normal parameters of the production, besides the obligations assumed through contract by the buyer.

(61) One of the financial restructuring measures is represented by the support granted by the state to the company by foregoing of the budgetary creditors from some certain revenues and granting facilities to the payment of obligations to them (exemptions and reschedulings of debts) in amount of ROL 458,741,723,315, as detailed in para. (29) and (30). Facilities are granted in order to bring the company to viability.

(62) On the other hand, the state aid beneficiary adopted a new policy regarding the recovery of due receivables by granting discounts in order to collect them, as well as by suing debtor clients. Thus, the company managed to recover until now ROL 32,567 million, estimating that a further ROL 4,500 million will be recovered.

(63) Also, the company managed to sell finished products and the non-moving stock by granting discounts amounting ROL 5,991 million. Following this action an estimated ROL 5,000 million will be recovered.

(64) At its turn, the investor committed through the sale-purchase agreement to provide a working capital of USD 90,000, the equivalent of ROL 2,974 million.

(65) Synthetically, the restructuring measures are presented in Table no. 12.

Table no. 12 – Cost of restructuring measures at S.C. SUBANSAMBLE AUTO S.A.

No.	Measure description	Assessment of implementing costs [ROL million]			
		Company own sources	Investor contribution	State aid	Measure total
1.	Organizational restructuring	400	-	-	400
2.	Technical and technological restructuring	180,466	49,371	-	229,837
3.	Environment protection investments	-	2,098	-	2,098
4.	Financial restructuring of the company	63,652	2,974	458,741	525,367
TOTAL		244,518	54,443	458,741	757,702

Source: Restructuring plan

(66) Within the restructuring program, the company realistically determined financing sources of the restructuring in the following period, on one hand based on own sources and, on the other hand, based on commitments assumed by the buyer by signing the share sale-purchase agreement regarding working capital, investments in technology, absolutely required to carry out business, as well as for environment protection.

(67) Within the financial restructuring component, the restructuring program allows for the increase of the cash flow, for a stable cash-flow, which will relieve the company finances. This way the company will be able to pay its current debts to the state and to allocate required liquidity in order to execute planned investments required in order to develop and sustain the production program in the long run.

6.3. Belonging to a group of companies

(68) According to provisions of art. 2 para. (5) from the Regulation a company belonging to a group is not normally eligible to be granted rescue and restructuring aid, except the case where it can be demonstrated that difficulties of the company are of its own and do not result from an arbitrary allocation of costs within the group and these are too serious to be dealt with by the group.

(69) The fiscal facilities granted at the privatization of S.C. SUBANSAMBLE AUTO S.A. relate to historical debts – a consequence of the economic results from the previous years prior to the sale of the majority stake, therefore are of its own.

(70) Because the privatization of S.C. SUBANSAMBLE AUTO S.A. has been achieved by acquisition of the majority stake by the Employees' Association and the management of the company, respectively "ARC" Sfintu Gheorghe, we can not talk about a group within the meaning of the legal provisions regarding state aid.

6.4. Restoring the company's viability

(71) According to art. 13 from the Regulation regarding state aid for rescue and restructuring of companies in difficulty, the granting of restructuring aid is conditioned by the implementation of the restructuring plan which is at the base of the assessment of the Competition Council regarding state aid. The restructuring plan, whose timing has to be as short as possible, must contain abandonment of loss making activities and to offer the company the long term viability, allowing it to operate with own resources. The restructuring plan must be based on a realistic estimate of the market conditions, the restoration of viability having to result, mainly, from internal measures contained by it, as well as from considering external factors such as price and demand variations, factors upon which the company has no determining influence.

(72) The state aid Beneficiary drafted a restructuring plan – based on the SWOT analysis presented in detail at point (50) and on the market study - comprising measures of organizational, technological, environmental as well as financial restructuring, presented in detail at para. 6.2. of the current decision.

(73) Thus, the future strategy has been elaborated based on the strengths and the weaknesses of the company and having regard the opportunities and threatens which the company is confronted with. There have resulted a series of decisions regarding the

development strategy of the company, which could make possible reaching the viability as a consequence of implementing the restructuring plan.

(74) The implementation of the restructuring plan has as main objective the drastic reduction of losses and reaching an operational balance, with the prospect of making profit. The first signs regarding the adaptation of the company to the new requirements started to appear from the end of 2003, noticing an improvement of some financial indicators, as a result of the investing efforts of the company.

(75) Following the implementation of the restructuring plan it is envisaged to reach company viability by:

- externalizing loss makin activities;
- diversification of markets;
- consolidation of domestic market and expansion on external markets for main production;
- improving management, especially in marketing and production management;
- increasing usage of production capacities;
- delivery of products exclusively based on collection guarantees;
- diversifying supply sources coupled with diversification of production;
- intensifying receivables collection coupled with decrease of arrears.

(76) The fact that the implementation of the measures contained in the restructuring plan leads to company viability is demonstrated by the estimate for the profit and loss account during the restructuring period, presented in the following table:

Table no. 13 – Profit and loss account in 2003-2007

		ROL million				
	Indicator description	2003	2004	2005	2006	2007
1	Total revenues, of which:	134,045	144,075	158,588	174,411	191,813
	- Operating revenues	133,500	143,000	157,400	173,100	190,366
	- Financial revenues	545	1,075	1,188	1,311	1,447
	- Extraordinary revenues	0	0	0	0	0
2	Total expenses, of which:	119,553	118,918	129,277	140,579	152,869
	a) operating, of which:	119,471	118,828	129,176	140,469	152,749
	- raw materials and materials	26,095	28,703	31,559	34,318	37,318
	- water and energy	11,743	12,917	14,209	15,451	16,802
	- works and services by third parties	23,067	25,374	27,900	30,339	32,991
	- personnel	31,069	24,156	27,630	31,065	34,800
	- depreciation and provisions	11,661	11,661	11,661	11,661	11,661
	- other	15,836	16,017	16,217	17,635	19,177
	b) financial	82	90	101	110	120
	c) extraordinary	0	0	0	0	0
3	Gross profit (+) / Loss (-)	+14,492	+25,157	+29,311	+33,832	+38,944

Source: Notification form

(77) Following the achievement of the measures, at the end of the implementation period of the restructuring plan it is aimed to reach the following indicators, as follows:

Table no. 14 – Targeted financial and economic

1. Net profit	ROL million	32,713
2. Turnover	ROL million	181,600
3. Number of employees	persons	140
4. Receivables collection timing	days	45
5. Payables timing	days	22.9
6. Return on assets	%	10.3
7. Return on equity	%	12.2
8. Cash flow	ROL million	48,353

Sursa: Programul de restructurare al SC SUBANSAMBLE SA

(78) The fact that S.C. SUBANSAMBLE AUTO S.A. was acquired by the Employees' Association demonstrates their confidence in the company's ability to revigorate and represents an additional reason that all efforts will be made to achieve the measures contained in the restructuring plan in order to reach the final goal – the viability of the company.

6.5. Avoiding the significant distortion of the competitive environment

(79) Applying the restructuring program will allow the restoration of earning capacity of for the activity of S.C. SUBANSAMBLE AUTO S.A. at levels accepted by the market, by reducing costs, increasing efficiency and eliminating the burden of historical debts (financial restructuring).

(80) By granting the state aid and the application of the restructuring program of S.C. SUBANSAMBLE AUTO S.A. the structure of the relevant market does not suffer changes with anticompetitive effects, this action having as purpose the increase of efficiency of the company by reducing production costs and does not lead to a surplus of liquidity to be used in aggressive activities distorting competition on the market with no relevance to the restructuring process.

(81) According to the provisions of the Regulation regarding state aid for the rescue and restructuring of companies in difficulty, in order to minimize as much as possible the negative effects over competition on relevant markets, so as to the positive effects positive envisaged by granting the aid to mitigate the negative effects, compensating measures must be taken.

(82) During the implementation of the restructuring plan the following equipments and machinery are to be retired and dismantled and the following assets will be sold:

- automated copying lathe –1pcs.
- grinding machine –18 pcs.
- milling machine - 7 pcs.

- revolver lathe - 3 pcs.
- copying lathe - 2 pcs.
- mortising machine - 1 pcs.
- die slotting machine - 1 pcs.
- frontal lathe - 1 pcs.
- mașină de șevăruit - 4 buc
- tool shop - 1 pcs.

The equipments will be dismantled and sold until the end of 2006.

(83) In these circumstances, having in view that SC SUBANSAMBLE AUTO SA has a market share of 92.9% on the non traction front axles (even if the weight of the sales of this product in the total turnover is of approx. 2%) and a market share of 37% on the spare parts market (while the sales of these products have a majority of 65% in the total turnover) the reduction of the production capacities is imposed as follows:

Table no. 15 – Reduction of capacities in 2007 compared to 2001

Product categories	Capacity reduction (%)
Non traction front axles	45.2
Spare parts	25.5

Source: Supplementary information

(84) On the other markets, respectively the gearbox market and distribution boxes and power sockets market, the company will reduce capacities naturally in order to ensure viability by eliminating some equipments and loss making installations.

6.6. Aid limited to minimum

(85) The analysis of the difficult economic and financial conditions the company is confronted with prior to privatization, has shown that in order to stay in business and become viable, both the company privatization and granting of restructuring facilities were required.

(86) According to art. 15 of the Regulation regarding state aid for rescue and restructuring the of companies in difficulty, the amount and the intensity of the state aid must be limited to the strictly required minimum, in order to allow for restructuring pending the existing financial resources of the company and shareholders. The state aid beneficiary must bring a significant contribution to the restructuring plan from own resources, including from sale of non-essential assets for the survival of the company or from external financing in market conditions.

(87) The total cost of restructuring SC SUBANSAMBLE AUTO SA in total amount of ROL 757,702 million comprises:

- cost of organizational restructuring ROL 400 million
- cost of technological restructuring ROL 229,837 million
- cost of environmental restructuring ROL 2,098 million
- cost of financial restructuring ROL 525,367 million.

(88) The restructuring program is financed from own company sources, contribution of the majority shareholder and requested state aid, in amount of ROL 458,741 million, which underlines that the value of the state aid is reduced to the strictly required minimum so the proposed program be finalized in operating conditions proposed by the company as a beneficiary of the state aid.

(89) Thus, from the total restructuring cost in amount of ROL 757,702 million, 32.3% will be financed from company's own sources, 7.2 % from the buyer's own sources and 60.5% from financial support granted by the state.

(90) The own contribution of 39.5% respectively ROL 298,961 million to the restructuring costs is provided by:

- contribution of the investor assumed at privatization – ROL 54,443 million
- company's own sources – ROL 244,518 million, of which:
 - ROL 72,863 million – depreciation of fixed assets;
 - ROL 64,380 million – company sources from certain contracts and contracts to be concluded in 2005;
 - ROL 37,067 million – recovery of receivables;
 - ROL 32,850 million – sale of equipments and assets contributing to the core business;
 - ROL 37,358 million – sale of assets non essential for the survival of the company.

(91) According to art. 15 from the Regulation regarding state aid for the rescue and restructuring of companies in difficulty, the amount and the intensity of the aid must be strictly limited to the minimum restructuring costs required in order to allow the restructuring with the existing financial resources of the company, its shareholders or of the group they belong to. In the case of S.C. SUBANSAMBLE AUTO S.A., the intensity of the state aid, calculated as a ratio between the value of the state aid and the total restructuring cost has a level of 60.5%.

(92) The value of the aid and the form in which it is granted is not offering the company a surplus of liquidity which would be used with the purpose of aggressive market distorting actions, with no relevance with the restructuring process.

(93) In accordance with provisions of art. 15 para. (2) from the Regulation, for medium sized companies, a contribution of at least 40% is considered satisfactory. Also, the same article of the regulation mentions that in exceptional situations and in extreme cases which need to be demonstrated by grantors, a real lower contribution can be accepted. In this case, it was underlined that if the state aid is not granted this would condemn the company to bankruptcy, with all the social consequences deriving from it (the Covasna county had in the first quarter of 2005 an unemployment rate of 8.7%, over the national average of 6.2%).

(94) In information received in completion of the notification form it is underlined that if the company would go bankrupt the employees would lose besides their jobs also their

houses, which were pledged for bank loans to buy shares and to meet the investment obligations assumed through the privatization contract which were fully met so far.

(95) In these circumstances, the Competition Council considers as significant the beneficiary's contribution to the implementation of the restructuring plan of 39.5%.

6.7. Observing the „first time last time principle”

(96) S.C. SUBANSAMBLE AUTO S.A. Sfantu Gheorghe has not received restructuring state aid, thus observing the provisions of art. 18 from the Regulation stipulating the fact that restructuring must be granted only once.

6.8. Monitoring and annual reporting

(97) According to provisions of art. 18 from the Regulation regarding state aid for the rescue and restructuring of companies in difficulty, the Competition Council constantly monitors the implementation of the restructuring plan so this does not deviate from meeting the set objectives and the dispositions of the present decision. Copies of the financial statements of S.C. SUBANSAMBLE AUTO S.A. will be sent annually.

7. CONCLUSIONS

(98) Considering all of the above, the Competition Council notes that the individual state aid intended to be granted to S.C. SUBANSAMBLE AUTO S.A. is compatible with the normal competitive environment and does not unduly affect trade with the member states of the European Union.

DECIDE

Art. 1. The measure notified by the Authority for State Assets Recovery for S.C. SUBANSAMBLE AUTO S.A. Sfantu Gheorghe represents state aid within the meaning of art. 2 para. (1) of Law no. 143/1999 with the subsequent modifications and completions.

Art. 2. Based on art. 12 para. (2) c) corroborated with art.14 para. (1) e) from Law no. 143/1999 with the subsequent modifications and completions the state aid for the restructuring to be granted to S.C. SUBANSAMBLE AUTO S.A. Sfantu Gheorghe is granted with the condition of observing art. 3 and 4 of the present Decision.

Art. 3. The company is obliged to implement entirely the assumed restructuring plan.

Art. 4. The company is obliged to reduce production capacity by 45.2% for non traction front axles and by 25.5% for spare parts.

Art. 5. In the case the conditions imposed ny the present decision are not met, the provisions of art. 13 from Law no. 143/1999 with the subsequent modifications and completions will be applied.

Art. 6. The value of the state aid to be granted is of ROL 458,741,723,315.

Art. 7. The present Decision is applicable as of its communication.

Art. 8. According to provisions of art. 24 from Law no. 143/1999 with the subsequent modifications and completions the Authority for State Assets Recovery will send to the Competition Council information regarding the granted aid, for its inventory and monitoring. Also, Authority for State Assets Recovery will send annually the financial statements of the company.

Art. 9. According to provisions of art. 29 from Law no. 143/1999 with the subsequent modifications and completions, the present Decision can be appealed by intersted parties to the Appeals Court of Bucharest, the Administrative Litigation Section, within 30 days of its communication.

Art. 10. The present Decision will be communicated by the Secretariat General of the Competition Council to:

- Autoritatii pentru Valorificarea Activelor Statului, str. Cpt. Av. Alexandru Serbanescu, nr. 50, sector 1, Bucuresti;
- S.C. SUBANSAMBLE AUTO S.A., str. Lt. Paius David, nr. 9, municipiul Sfantu Gheorghe, jud. Covasna.

Art. 11. The Secretariat General and the State Aid Authorization Department of the Competition Council will follow the compliance of the present Decision.

PRESIDENT

MIHAI BERINDE