

DECISION
No. 147 from 03.08.2005

**regarding the State aid notified by the Authority for State Assets Recovery granted to
S.C. SILVANIA FOREST S.A. Satu Mare**

COMPETITION COUNCIL,

Having in regard the provisions of the Competition Law no. 21/1996, published in the Official Gazette, Part I, no. 88 of April 30, 1996, amended and completed by Government Emergency Ordinance (G.E.O.) no. 121/2003, approved by Law no. 184/2004;

Having in regard the provisions of the Law no. 143/1999 on state aid, published in Official Gazette, Part I, no. 370 of 3.08.1999, amended and completed by Law no. 603/2003;

Having in regard 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 Official Gazette, Part I, no. 73 of April 12, 1993;

Having regard the provisions of the Regulation on State aid for rescue and restructuring firms in difficulty, published in the Official Gazette of Romania, Part I, no. 1215 on 17.12.2004, with the subsequent modifications and completions;

Having in regard the provisions of the Decree no. 57/2004 for the appointment of the Competition Council's members;

Based on the following reasons,

I. THE NOTIFICATION PROCEDURE

- (1) By the address no. VP4/1633/22.06.2005, registered at the Competition Council with no. RS-AS 48/22.06.2005, the Authority of State Assets Recovery (A.V.A.S.) notified based on art. 6 in the Law no. 143/1999 on State Aid, amended and completed by Law no. 603/2003 and by G.O. no. 94/2004 regarding some financial measures, the individual State Aid for the restructuring of SC SILVANIA FOREST SA Satu Mare within the privatization process.
- (2) By the address no DAAS/633/24.06.2005, the Competition Council requested supplementary information. AVAS transmitted the response at the supplementary information required by the address VP4/1956/11.07.2005. The notification became effective when the data were complete and exact, namely on 11.07.2005.

2. DESCRIPTION OF THE MEASURES

2.1. LEGAL BASIS FOR GRANTING THE STATE AID

- GEO no. 26/2004 regarding certain measures for ending the privatization of undertakings within the AVAS portfolio and strengthening of certain privatizations, as it was amended and approved by the Law no. 442/2004;
- GEO no. 26/2005 on abolishing the legal provisions on the granting of facilities for payment of overdue budgetary debts.

2.2. Financial support measures granted to S.C. SILVANIA FOREST SA Satu Mare

- (3) Financial support measures notified by AVAS are granted in the context of SC SILVANIA FOREST SA Satu Mare privatization. Therefore, the company would benefit from the facilities provided by the GEO no. 26/2004, facilities that are mentioned in the presentation file and in the share conveyance contract, respectively facilities for payment of certain overdue budgetary debts to the state consolidated budget and to AVAS.
- (4) At the time of privatization, SC SILVANIA FOREST SA Satu Mare benefited from the following financial support measures:
1. **Exemption from payment** in amount of ROL 83.024 mill.:
 - 85% from the budgetary obligations, representing basic overdue debts at 31.12.2003: ROL 15,678 mill.;
 - interests and any kind of penalties afferent to the overdue budgetary obligations at 31.12.2003, calculated till the date of the ownership transfer over the shares: ROL 59,043 mill.;
 - interests and any kind of penalties calculated for the unpaid contribution of the employers and employees at the National Health Found: ROL 7,439 mill.;
 - interests and any kind of penalties afferent to the obligations that are making the object of payment easements, calculated roughly from 01.01.2004 till the date of issuing the common order: ROL 864 mill.
 2. Rescheduling, in amount of ROL 17,327 mill., consisting of:
 - 15% from the overdue budgetary obligations at 31.12.2003, in amount of ROL 2,767 mill.;
 - budgetary debts retained at source: ROL 3,318 mill.;
 - unpaid budgetary obligations owed, calculated roughly from 01.01.2004 till the date of issuing the common order: ROL 6,654 mill.;
 - amounts representing the overdue employer's and employees contribution at National Health Found at 30.06.2003 : ROL 4,588 mill.
 3. Conversion of the debts into shares, those debts representing dividends and moratorium recovery of damages, calculated to the date of the conversion in amount of ROL 416 mill.

- (5) S.C. SILVANIA FOREST S.A. Satu Mare benefited at privatization of payment facilities in total quantum of ROL 100,767 mill.

3. The beneficiary of the state support measures - S.C. SILVANIA FOREST S.A. SATU MARE

- (6) S.C. SILVANIA FOREST S.A. was set up according to Romanian Law as a joint-stock company, registered at Trade Register under no. J30/269/1996, having Registry Unique Code no. R8246095. The company was set up by separating from another company SC Foremar SA.
- (7) The company has registered at the Trade Register Office before the privatization date, a registered capital of ROL 107,965 mill., divided in 4,318,614 shares with a nominal value of ROL 25,000 per share, structured as it follows:
- A.V.A.S. 95.20%;
 - Mepa Investment Ltd 3.36%;
 - natural persons 0.74%;
 - SIF Banat Crisana 0.70% .
- (8) The SILVANIA FOREST SA Satu Mare has been privatized by signing the Shares Sale – Purchase Contract no. 74/27.10.2004 between AVAS and S.C. LIBERTATEA S.A. Cluj Napoca. The transfer of the ownership shares took place on 29.10.2004.
- (9) The new structure of the shareholders of SILVANIA FOREST, as result of the transfer of the ownership rights is the following:

Table no. 1. The structure of the shareholders after privatization

No.	Name of shareholder	%	No. of shares	Total value - ROL -
1.	SC LIBERTATEA SA Cluj	95.1979	4,111,230	102,780,750,000
2.	Natural persons	0.7434	32,103	802,575,000
3.	SIF Banat Crisana	0.6972	30,111	752,775,000
4.	Mepa Investment Ltd. Hong Kong	3.3615	145,170	3,629,250,000
	Total	100.0000	4,318,614	107,965,350,000

Source: The notification form

- (10) The company's main activity is the primary wood processing, namely the cutting, smoothing and impregnating of the wood, manufacturing of carpentry and joinery elements, of wood packings and, also, the chairs' production.
- (11) Beside the main activity, the company as secondary activity provides shunt services, being endowed with a LDH-45 Diesel Locomotive authorized for manipulations on 1,400 m on their own tracks from the factory limits and for the exiting in the rail stations.

- (12) The main groups of manufactured products are:
- timber of wood resin, of oak, of various species;
 - house carpentry;
 - classic parquet, layered.
- (13) The company employees number has fallen from 436 persons in 2001, 204 in 2002 and 157 in 2003, attaining in 2004 only 121 persons.
- (14) Thus, at the time of privatization, the undertaking had 121 employees and a turnover of ROL 24,206 mill., respectively EUR 614,709, there by fulfilling two of the criteria of SME definition, i.e. a medium enterprise. Following the ownership transfer, S.C. SILVANIA FOREST S.A. Satu Mare became a linked enterprise, according to art. 7(a) from *Regulation regarding the amendment and completion of the Regulation regarding the state aid for small and medium sized enterprises*, and the total number of employees of the two companies adds up over 800 employees. In consequence, hereinafter it is to be considered that the undertaking is a large enterprise.

4. DESCRIPTION OF THE PRIVATISATION PROCESS

- (15) Before the privatization in 2004, SC SILVANIA FOREST SA was the subject of unsuccessful privatizations. These privatizations failed due to infringement of the contract obligations by investors, thus:
- in July 1998 the majority stock of shares of 70% has been bought by GTI Madrid,
 - in the year 2001, the majority stock of shares of 70% is undertaken by MEPA INVESTMENTS Hong Kong.
- (16) At the date of 06.09.2001 the undertaking begins the judicial reorganization process and in November 2001 the Board resigned. The administration of the company was conducted by a judicial administrator, bankruptcy judge and an executive board, according to the *Law no. 64/1995 regarding the procedure of judicial restructuring and the bankruptcy*. Until May 2003 the company was in judicial administration procedure.
- (17) Starting with May 2003 the company enters into special administration procedure (which involves the suspension of the procedure of judicial reorganization) according to *Law no 137/2002 regarding certain measures for privatization acceleration*, with subsequent amendments and completions. At 09.05.2004 the period of special administration expired. Based on the provisions of Law which permit the prolongation of the period of judicial reorganization procedures to be suspended for 1 year, in 26.04.2004 AVAS asks the Court of Satu Mare to prolong the period, in order to privatize the company.

- (18) The privatization process started on 23.08.2005 by publishing in the central and local media and on the internet information concerning the sale of 4,111,230 shares, representing 95.1979% of the registered capital of the company, and also by displaying the selling offer at the company's headquarter and at AVAS.
- (19) In the presentation file that was created in order to sell the stock of share held by AVAS at S.C. SILVANIA FOREST S.A. Satu Mare, were information regarding the economic – financial, judicial and environmental situation of the company, and the facilities from which the company can benefit as a result of the contract finalization. Also, the sale offer was provided to the potential investors to make their own audit of the company, in order to obtain an informed view of the company and assess the purchase offer.
- (20) The presentation file has been bought by SC LIBERTATEA SA Cluj which filed the prequalification document in term (03.09.2004). The final offer improved the price and the investment in comparison with the initial one, thus:
- the price of a share rise from ROL 500 to ROL 600,
 - investments for development are rising from EUR 200,000 at EUR 205,000,
 - investments for environment increase from EUR 50,000 at EUR 60,000.
- (21) The privatization process has been finalized by signing the Shares Sale – Purchase Contract no. 74/27.10.2004 with SC LIBERTATEA SA Cluj Napoca, and the ownership of shares were transfer on 29.10.2004.
- (22) The commitments assumed by the buyer within the privatization process frame consist of:
- EUR 25,000 working capital – deadline: 60 days from the date of the ownership transfer over the shares,
 - EUR 325,000 investment for development – deadline: 3 years starting with the date of the ownership transfer over the shares,
 - EUR 60,000 investment for the environment protection - deadline 2 years starting with ownership transfer over the shares; these investments are designed to realize the environmental obligations.
- (23) AVAS considers that the privatization process was conducted in the open and transparent procedure.

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

- (24) The criteria which permit to be established whether a financial support measure represents a state aid are stipulated in art.2, paragraph (1) of the Law no.143/1999 on state aid with subsequent amendments and completions. According to the Law, “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 favoring 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, being considered incompatible with a normal competitive environment.

- (25) The financial support that is granted to SC SILVANIA FOREST SA Satu Mare, notified by AVAS, consists in revenues foregone by the State; therefore are involved state's resources.
- (26) The financial support granted under the provisions of the GEO no 26/2004, are applied strictly to the undertakings that are going to be privatized, one of them being SC SILVANIA FOREST SA. Thus, the financial support granted to SC SILVANIA FOREST SA has a selective character.
- (27) The granting of financial support measures creates an economic advantage for SC SILVANIA FOREST SA, in that the company is being exempted from the payment of certain debts owed to the budgetary creditors, as well as from payment of interests and penalties for delay payment of the outstanding budgetary debts. The granting of these facilities has a positive effect on economic-financial and cash-flow parameters. Therefore, company obtains an advantage, in comparison with its competitors.
- (28) The financial support granted to SC SILVANIA FOREST SA creates the premises for a potential distortion of competition on the relevant markets, as the company is helped to survive on these markets. Also, there is no doubt that the financial support granted to SC SILVANIA FOREST SA may affect the trade with EU Member States since the products manufactured by the company compete on the Romanian market similar products manufactured by other EU companies.
- (29) To conclude, financial support measures are considered to be state aids and they are subject to the *Law no. 143/1999 on state aid*, with subsequent amendments and completions.

6. COMPATIBILITY WITH STATE AID LEGAL BASE

- (30) Article 2 of Law no. 143/1999 on state aid with further amendments and completions, provides that the aids granted by the state or from state resources, that distort or threaten to distort competition or affect the trade with EU Member States are incompatible with the normal competitive environment.
- (31) The state aid objective is restructuring of SC SILVANIA FOREST SA Satu Mare in order to restore the company's viability at the end of the restructuring period. If the conditions set out in the Regulation on state aid for rescuing and restructuring firms in difficulty are observed, the state aid can be deemed compatible.

- (32) The restructuring aid is based on the implementation of a feasible, coherent plan to restore a firm's long-term viability. In this regard, the Regulation provides that usually, restructuring involves one or more of the following elements: the reorganization and rationalization of the firm's activities on a more efficient basis, typically involving the withdrawal from loss-making activities, the restructuring of those existing activities that could be made competitive again and, if possible, their diversification in the direction of new and viable activities. Usually, industrial restructuring must be accompanied by financial restructuring (capital injections, debt reduction).
- (33) The Competition Council evaluates the state aid granted to SC SILVANIA FOREST SA, according to the criteria from the *Regulation regarding the state aid for the rescue and restructuring of the firms in difficulty*, published in Official Gazette no. 1215/17.12.2004, issued in the application of the *Law no. 143/1999 on state aid*, with further amendments and completions. To be considered compatible with a normal competitive environment, the state aid must fulfill all the criteria from the above mentioned Regulation.

7. THE ELIGIBILITY OF SC SILVANIA FOREST SA SATU MARE – FIRM IN DIFFICULTY

- (34) A company is eligible for rescue or restructuring aid provided that it qualifies as a firm in difficulty within the meaning of the *Regulation on state aid for rescuing and restructuring firms in difficulty*. In accordance with this Regulation, the Competition Council regards a firm as being in difficulty if it is not able to cover its losses, through its own resources or with the funds obtained from its owners/shareholders or creditors, and which, without outside intervention by the public authorities, it is almost certain to go out of business in the short or medium term.
- (35) According to article 2 lit. c) at the *Regulation regarding the state aid for the rescue and restructuring of the firms in difficulty*, a company is also considered as being in difficulty when it fulfills the conditions set out in procedures concerning legal reorganization and the bankruptcy.
- (36) Therefore, the Competition Council notes that, according to the information stated on the notification form, from the year 2001 till present SC SILVANIA FOREST SA Satu Mare has been in the judicial reorganization procedure, special administration, and now is being in the insolvent procedure disposed by the civil sentence of Satu Mare Court¹.

¹ The supplementary information provided by AVAS emphasized that during the period of juridical reorganization and special administration were calculated interests and penalties for delayed payment afferent to budgetary obligations, that were included in the amount of the notified state aid.

- (37) Also, the state aid grantor highlights in the notification form that, from an analysis of the main financial – economic indicators it results that the S.C. SILVANIA FOREST S.A. has the characteristics of a company in difficulty. Thus, the company has recorded losses every year, a high indebtedness ratio, the raise of inventory and debts, a low level of cash and solvency indicators and a decrease in the net assets.
- (38) Taking into account the above mentioned facts, the Competition Council concludes that S.C. SILVANIA FOREST S.A. Satu Mare is a company in difficulty as it is defined in the *Regulation regarding the state aid for the rescue and restructuring of the firms in difficulty*.

8. HISTORY OF THE COMPANY'S FINANCIAL DIFFICULTIES

- (39) As is has shown at chapter 7, at the privatization moment, the company was in financial difficulties. The circumstances that lead to the difficulties of the company, are as follows:
- the lack of cash flow for the normal development of the production process;
 - moral and physical deterioration of the equipment;
 - unpredictable rises of the prices for the materials and raw materials, fuels and utilities;
 - bad management;
 - the reduction of the market for parquet triple stratified.
- (40) Taking into account this difficult situation, AVAS 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 AVAS 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 investor took place.
- (41) According to the Shares Sale – Purchase Contract, the investor accepted to make a contribution of EUR 410,000, respectively ROL 14,240 mill. for the implementing of S.C. SILVANIA FOREST S.A. Restructuring Program.
- (42) The state contribution the company's financial restructuring is in value of ROL 100,767 mill. The state contribution relates exclusively to the company's historical debts, up to the date of transfer of the ownership. Consequently, these debts will be exempted from payment or reschedule at payment.

9. THE CRITERIA TO BE FULFILLED FOR THE GRANTING OF STATE AID FOR RESTRUCTURING

- (43) The state aid for S.C. SILVANIA FOREST S.A. is considered individual aid for restructuring and is granted in the base upon the existence a Restructuring Program for the 2005-2009 period, drawn up by the company together with the buyer and

AVAS. The program's objective is to restore the company's viability at the end of the implementation period.

- (44) Thus, the Competition Council will assess the state aid granted to S.C. SILVANIA FOREST S.A. Satu Mare according to the criteria provided in the *Regulation regarding the state aid for the rescue and restructuring of the firms in difficulty* (hereinafter the Regulation), on the following basis:
- restoring the long-term viability of the company;
 - avoidance of undue distortions of competition;
 - aid limited to the minimum; the aid proportionality;
 - the observance of the "first time, last time" principle;
 - the achievement of the objectives envisaged in the Restructuring Plan and the annual monitoring of its implementation;
 - member of a group.

10. DESCRIPTION OF THE RESTRUCTURING PROGRAM

- (45) The company and AVAS had elaborated a restructuring plan for the 2005 – 2009 period, composed of organizational, technical, environment and financial measures, based on a Market Survey, containing a present evolution and forecast of the demand and supply on the relevant market of the product, and a SWOT analysis.
- (46) The SC SILVANIA FOREST SA restructuring strategy focuses the following directions:
- the diversification of the products offered by manufacturing of the half-finished products for the furniture production;
 - improving the quality of the manufactured products and developing of the house delivery network;
 - developing the capacity of the classic parquet manufacturing, with a commercialization extension to the foreign markets;
 - enlarging the activity's efficiency through reorganization of the company on directions, compartments and activities;
 - updating and modernizing the existing technology on basis of the consented investments, which would lead to the increase of the output and profitability;
- integral recovery of the wastes resulted from the manufacturing, and so it is transformed into its own thermal energy.
- (47) The Restructuring Plan submitted by AVAS contains the causes which lead to the company being in financial difficulties, as well as the measures that were lead to the long term viability of the company. By implementing the measures set out in the Restructuring Plan, AVAS envisages an improvement of the economic-financial indicators of the company and a better management of its own financial funds which means no debts to the consolidated state budget.

- (48) The Restructuring Plan drafted with the buyer and AVAS covers the period 2005 – 2009. Briefly, the measures provided in the Restructuring Plan are presented below, as it follows:

Table no. 2 Synthesis of the measures from the SC SILVANIA FOREST SA restructuring plan

- mill. ROL -

No.	Measures	Evaluation of the implementation costs			
		Measure total cost	Company own sources	Investor sources	State aid
1.	Measures of organizational and managerial nature	2,700	2,500	200	-
2.	Measures of technical and technological nature	43,785	31,905	11,880	-
3.	Measures regarding the environment protection	4,800	2,640	2,160	-
4.	Financial restructuring measures	155,267	54,500	-	100,767
	RESTRUCTURING TOTAL COST	206,552	91,545	14,240	100,767

Source: Restructuring program of SC SILVANIA FOREST SA Satu Mare

- (49) The restructuring Plan requires a financial effort of ROL 206,552 mill. This Plan envisages to restore the viability of SC SILVANIA FOREST SA Satu Mare in 2009 (at the end of the restructuring period).

10.1. Relevant market

- (50) SC SILVANIA FOREST SA is active on the market of wood manufacturing, the main products are: timber, classic parquet and house carpentry. Until now the undertaking products were commercialized only on the domestic market.

- (51) According to the market study annexed at the restructuring plan of SC SILVANIA FOREST SA, the market share hold by the company on the national market are the following :

- for timber: 2%,
- for classic parquet: 4%,
- for house carpentry: 0.2%.

- (52) The market of wood manufacturing is characterized by the presence of a great number of small manufactures, such as SILVANIA FOREST, which have insignificant market shares. The main competitors of the company are: SC Foremar Baia Mare, SC Cozia Forest Rîmnicu Vâlcea, SC FORESTA SA Curtea de Arges, SC FORESTAL SA Stalpeni, SC COLEMN SA, SC FORESTA PRIM SA, SC IFOR SA, SC EXTRAMOB SA Tg. Lapus, SC SIGHETFOR SA, SC INDAFOREST SA, SC STAR FOREST Tg. Neamt, SC SEF PETROFOREST SA, SC UTIL MEC FOREST SA, SC HUMOR FOREST SA, SC RAFOR SA Campulung and SC REGNAFOR SA Vatra Dornei.

- (53) The clients of company's products are the manufacturing undertakings which participate in the furniture industry and buildings. During 2004, the main clients of the company were:

Table no 3. The main clients of SC SILVANIA FOREST SA

No.	CLIENTS	% from turnover
1.	DAX BRASOV	45
2.	ERGOLMN Satu Mare	40
3.	SAMPROD Satu Mare	13
4.	Others (under 2%)	2

Source: Market Study for SC SILVANIA FOREST SA

- (54) The domestic market of the company's specific products has real growing opportunities, specially for the specialized undertakings such as SILVANIA FOREST Satu Mare, as a consequence of re-launching the building of houses and apartments.

10.2. Managerial and organizational restructuring

- (55) Managerial and organizational restructuring include the following measures:

Table no. 4 Measures regarding the managerial and organizational restructuring

- mill. ROL –

Measure	Implementing effort	Financing			Effect
		Own sources	Buyer sources	State aid	
Modifying the company's organizational structure on profit centers for distinct sectors: - The manufacturing of timber, - The manufacturing of classic parquet - The manufacturing of drying half-finished	200 200 600	200 200 600	-	-	It allows the following and the quantification of the costs and results for each specific activity; it estimates a reducing of losses of ROL 300 mill in the first year from the measure appliance.
The organization of evidences and informatisation of administrative compartments, warehouses and of technical warehouses	600	600	-	-	The operative knowledge of raw material stocks, in order to eliminate the risk to over supply or do not know the necessary to be supplied.
The dismantling of assets, respectively land and building and technological equipments	500	500	-	-	It conducts to elimination the activities which register losses; after the turn account of this assets, evaluate by an independent expert, it will obtain ROL 24,600 mill.
The reorganization of distribution point of electricity	100	100	-	-	The reduction of energy consumption

The entering on the new sale market (including export) for the company's products. The promoting of undertaking imagine on internal and external plan	500	300	200	-	The attraction of a new costumers, which will generate a additional profit as a consequences of orders portfolio growing
TOTAL	2,700	2,500	200	-	

(56) The reorganization of the activities on profit centers gives the possibility for a better breakdown of overhead expenditures on groups of products, with direct impact over the selling price and product's quality. Following the reorganization of the process flows, a part of the assets of SC Silvania Forest SA are closed down. This has 2 objectives: the reduction of internal costs generated by their maintenance and repair and obtaining the necessary funds in order to sustain the measures included in the restructuring plan. The assets put out of function are land, CFR locomotive and the repairing workshop and were evaluated by an independent experts² at a value of ROL 24,600 mill. The company proceeds to their capitalization by selling.

10.3. The technical restructuring

(57) The technical investment set out in the Restructuring Plan are of ROL 43,785 mill, from which ROL 11,880 mill represents investments consented by the buyer through the share sale-purchase agreement.

Table no. 5- Measures regarding the technical restructuring

- mill. ROL -

Measure	Implementing effort	Financing			Effect
		Own sources	Buyer sources	State aid	
Reorganizing the manufacturing of classic parquet and dry half-finished products in a modernized hall and the endowment with the necessary equipments.	13,500	13,500	-	-	Are created the premises for integrating the production and manufacturing parts for the furniture production designed to the export. The investments which will be realized lead to the improvement of the outturn and they will have as result an additional profit of ROL 1,000 mill.
The modernization of production hall (parquet + dry half-finished products) through hydro	3,000	3,000	-	-	The improvement of work conditions and the harmonization with work protection

² The value of the dismantled assets was settle by the companies: Gyssistem Satu Mare and Darianne Romsuis Cluj Napoca.

insulation works, supplementary improvements					provisions.
Insuring the conditions for capitalizing the dry timber (including half-finished products) through acquiring 3 automatic dry rooms + boiler no. 2	8,800	8,800	-	-	The increase of drying capacity for timber which will be used as half-finished product or as raw material. The measure effect consists in obtaining an additional profit of ROL 1,000 mill. in the first year.
Modernization of waste collection products from the manufacturing halls (sawmills + classic parquet), respectively of the cutter for waste products and of the storage bunker.	18,305	6,605	11,700	-	Making efficient the wastes' capitalization activity in order to obtain heating energy.
Modernization of the packing process for parquet through acquiring a binding machine with propylene band	180	-	180	-	Increasing the quality of the packing with direct effect on their image on relevant market
TOTAL	43,785	31,905	11,880	-	

Source: The restructuring plan of SC SILVANIA FOREST SA Satu Mare

- (58) The aim of the technical investment is to accomplish the following objectives: improving of physical, mechanical and functional features of the products, increasing of processing efficiency and of the labor productivity, reducing of the energy consumption. All these objectives have as a result the decrease of losses and the increase of the profitability from the operating activity.

10.4. The restructuring for environmental protection

- (59) The environmental protection investments aim to accomplish the environment obligations. These consist of replacing the existing boiler with a new one, with an efficiency of over 90%, for burning wooden waste and sawdust under automatic supply conditions. The measure, beside the fact that solves the requests from the obligations regarding the environment, concurs to improve working conditions. At the same time, it ensures the necessary heating energy in order to dry timber in its own drying halls, ensuring this way a plus-value of the manufactured products.

- (60) The whole cost of implement the measure amounts ROL 4,800 mill., of which ROL 2,160 mill. are bared by the investor and ROL 2,640 mill. by the company.

10.5. The financial restructuring

- (61) 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.
- (62) One of the financial restructuring measures is represented by the support granted by the state in total value of ROL 100,767 mill., as it is detailed at par. (4). The facilities will be granted in order to ensure the company's viability.
- (63) In order to finance the current activity, the company opens a credit line at Transilvania Bank and capitalizes finished products' stocks and standstill or slow-movement of the inventory.
- (64) The financial restructuring includes the following measures:

Table no. 6 Financial restructuring measures

- ROL mill.-

Measure	Implementing effort	Financing		
		Own sources	Buyer sources	State aid
Capitalization of the finite products and standstill or slow-movement of the inventory	4,500	4,500	-	-
Contracting certain credits from the Romanian capital market, under market conditions ³	50,000	50,000	-	-
Write off of certain budgetary obligations	83,024	-	-	83,024
Converting the debts towards AVAS into shares	416	-	-	416
Reschedule at payment of certain budgetary debts	17,327	-	-	17,327
TOTAL	155,267	54,500	-	100,767

Source: The S.C. SILVANIA FOREST S.A. Restructuring Program

- (65) By the Restructuring Plan, the company forecasts 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.
- (66) 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.

³ By an address Transilvania Bank confirmed that SC SILVANIA FOREST SA may obtain credit facilities amounting ROL 50,000, during 2005-2009.

11. RESTORING THE LONG TERM VIABILITY OF THE COMPANY

- (67) The difficulties confronting SC SILVANIA FOREST SA led to a significant reduction in its activity, at the same time the debts owed to the State budget were increasing together with penalties for late payment and thus exceeding the value of the outstanding debts.
- (68) In autumn 2004, SC SILVANIA FOREST SA was privatized. In order to come out from the difficult situation, the company elaborated, together with the buyer and AVAS, a restructuring Program for 2005–2009. The synthesis of the measures that are included in the restructuring program of SC SILVANIA FOREST SA Satu Mare has been presented at Chapter 10.
- (69) The analysis of the Restructuring Plan and its contribution to the long- term restoring of the viability of SC SILVANIA FOREST SA is based on the provisions of art. 13 of the *Regulation on State aid for rescuing and restructuring of firms in difficulty*.
- (70) 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 abandonment 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.
- (71) The Restructuring Plan of SC SILVANIA FOREST SA was based upon the technical and economic data, which illustrated the company's activity before privatization. This plan was drawn up following an analysis of the strengths and weaknesses of the company and the circumstances which led to the difficulties faced by the company. There were also taken into consideration the opportunities and the threats that could arise.
- (72) The strategy of SC SILVANIA FOREST SA aims to maintain the strong points, such as: specialized personnel; developing of the management activity on the strength of strategies, plans, programs that have determined the objectives, modalities, resources, terms and responsibilities; good relations with the clients; having a conformation plan with explicit objectives regarding environmental protection. At the same time, the strategy follows the limitation through adequate measures of the weak points, such as: the absence of a marketing department; high supplying expenses due to the increase of raw materials' price; high run-out of the installations and equipments.

- (73) As a part of the restructuring program, the company will give up the unprofitable activities, such as the stratified parquet line. The company's production will focus on the manufacturing new products, demanded on the market, such as half-finished products for furniture, redirecting in this way its activity to the market areas that can lead to the company's profitability.
- (74) The state aid grantor emphasized that in order to contribute to the company's return to viability, the Buyer already included SC SILVANIA FOREST SA's products in its advertising campaign. It intends to sale SC SILVANIA FOREST SA's products together with its own, on the external market, once those products reach the quality necessary to meet with the external market's demands. At the same time, the majority shareholder will buy approximately 50% of the company's half-finished and timber production, ensuring in this way a sure sale market for SILVANIA FOREST.
- (75) The results of implementing the restructuring program can be evaluated as precise objectives (as presented at para. (76)) and measured by economic- financial indicators (as presented at para. (77)).
- (76) SC SILVANIA FOREST SA intends to accomplish certain objectives in order to achieve the viability after implementing the restructuring plan, respectively:
- achieving an operational equilibrium, in order to become profitable;
 - modernizing the existing technologies;
 - making the activity more efficient through the costs reduction;
 - increasing of labor productivity through the re-habilitation and re-organizing the activity and the production flows;
 - the diversification of the offered products;
 - improving the commercial and market strategy for a better covering of the market demand;
 - improving the work conditions for all the employees;
 - increasing of the utilization rate of the production capacities.
- (77) Through implementing the restructuring plan measures - at which both the company, the buyer will contribute through their own resources and also the state- is expected an improvement of the financial – economic indicators, as follows:

Table no.7 The evolution of the financial forecast – economic indicators

		-mill. ROL-					
Indicators		2004	2005	2006	2007	2008	2009
1	Total revenues, from which:	34,198	56,820	76,000	99,000	149,500	150,000
	- Exploitation revenues	33,041	56,320	75,500	98,000	149,200	149,500
	- Net turnover	24,206	60,000	80,000	100,000	150,000	151,000
	- Financial revenues	1,157	500	500	1,000	800	400
	- Extraordinary revenues	-	-	-	-	-	-
2	Total costs, from which:	37,828	50,820	68,000	87,000	131,500	133,400
	a) exploitation	37,747	50,220	65,500	84,200	129,500	130,500

	b) financial	81	500	2,500	2,800	2,500	2,900
	c) extraordinary	-	-	-	-	-	-
3	Gross profit (+) / Loss (-)	-3,630	6,000	8,000	12,000	18,000	17,000
4	Net profit (+) / Loss (-)	-3,630	5,040	6,720	10,000	15,120	14,200

Source: The SC SILVANIA FOREST SA Satu Mare Restructuring Program

(78) The economic and financial results of implementing of the Restructuring Plan are mainly related to the efficiency of the production process, by improving the technological productivity, as a result of the up-grading of the existing equipment and of the acquisition of new equipment. Thus, in comparison with 2003, the main economic-financial indicators have the following trend:

- total revenues and turnover has a positive trend;
- within the proposed Restructuring Plan, operational expenditures have a positive trend, in accordance with the development of the company's activity, given the raise of labor productivity and the up-dated technology;
- reduction of the overdue payments;
- the analysis of the economic-financial indicators shows the connection between the indicators and the actual situation of the company, as well as the appropriate and realistic planning of the production, which are aimed at restoring the viability of the company.

(79) As a result of implementing the measures included in the Restructuring Plan, at the end of the restructuring period, the company foresees to reach the target indicators, as it follows:

Table no. 8 The economical-financial target indicators

1. Net profit	ROL mill.	14,200
2. Turnover	ROL mill.	151,000
3. Own capital	ROL mill.	160,300
4. The period of debts recovery	days	9.6
5. The period of debts payment	days	38
6. Indebtness degree	%	9.9
7. Economical rentability	%	8.4
8. Financial rentability	%	8.8
9. Cash flow	ROL mill.	15,500

Source: The restructuring plan of SC SILVANIA FOREST SA Satu Mare

(80) 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 EXCESSIVE DISTORTION OF COMPETITION (COMPENSATORY MEASURES)

(81) According to the provisions of the *Regulation on State aid for rescuing and restructuring of firms in difficulty*, it's mandatory that compensatory measures should be taken, in order to minimize, as much as possible, the negative effects of

the State aid on the competition within relevant markets. These measures will be proportional with the distorting effects caused by the state aid and, especially, to the size and relative importance of the company on relevant markets. The reduction of the market presence of the company clearly results from the market survey, attached to the notification, as well as from any other relevant information, and is considered part of the restructuring plan.

- (82) According to the supplementary information received, in order to ensure the viability, at the end of the restructuring period, the company will reduce its production capacities for parquet by 20%, by ceasing the production of stratified parquet. These capacities reduction in loss making activities are not considered compensatory measures according to the Regulation because they are inevitable and necessary to restore the viability.
- (83) The compensatory measures to be taken by the company until the end of the restructuring period in order to avoid the distortion of the competition, consist in irreversible reductions of the production capacities, respectively directly productive assets and equipments. Therefore, the following equipments and installations concurring at the realization of the main objective of the company will be dismantled: tractors (4 pieces), auto-crane; bulldozer, automotive tank, automotive track, crane; forestry platform (4 pieces); ovens (2 pieces), bunker for sawdust; boiler heating station.
- (84) The irreversible reductions of capacities are parts of the restructuring plan and represent a reduction of 20% of production capacity, considering the level of 2004o, on the following markets:
- for timber: the capacity is reduced from 12,000 cubic at 9,600 cubic ;
 - for classic parquet: the capacity is reduced from 54,000 cubic at 43,200 cubic.
- (85) By the restructuring plan, SC SILVANIA FOREST SA does not increase its market shares, intending to maintain the market segment where it is currently active.
- (86) There are significant differences between the production capacity of SC SILVANIA FOREST SA and the effective used production capacity. As it can be noticed in the table no. 9 during 2001-2004 the company operated at a low production capacity, which was due mostly to the lack of working capital and raw material.

Table no. 9 The utilization of production capacities during 2001 – 2004

No	Product	2001		2002		2003		2004	
		Functioning capacity (cubic)	The degree of using (%)	Functioning capacity (cubic)	The degree of using (%)	Functioning capacity (cubic)	The degree of using (%)	Functioning capacity (cubic)	The degree of using (%)
1.	Timber	12000	22.97	12000	4.43	12000	9	12000	14
2.	Classic parquet	54000	83.79	54000	52.71	54000	67	54000	69
3.	Binaries	10800	16.22	10800	20.96	10800	11	10800	1

Source: The notification form

- (87) According to its Restructuring Plan, SC SILVANIA FOREST SA aims at accruing the level of exploitation of the production capacities.
- (88) 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 will not allow the beneficiary to increase its production capacities during the enforcement of the restructuring plan.

13. STATE AID LIMITED TO WHAT IS ABSOLUTELY NECESSARY (STATE AID PROPORTIONALITY)

- (89) In accordance with art.15 of the Regulation on rescue and restructuring firms in difficulty, the State aid intensity and quantum will 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 plan, 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.
- (90) The overall restructuring cost for SC SILVANIA FOREST SA is 206,552 mill. ROL and consists of:
- | | |
|---|-------------------|
| - costs of organizational restructuring | ROL 2,700 mill.; |
| - costs of technological restructuring | ROL 43,785 mill.; |
| - costs of environmental restructuring | ROL 4,800 mill.; |
| - costs of financial restructuring | ROL 155,267 mill. |
- (91) The cost for restructuring of SC SILVANIA FOREST SA amounts ROL 206,552 mill. is covered by the following sources:
- | | |
|--|-------------------|
| - own sources of SC SILVANIA FOREST SA | ROL 91,545 mill.; |
| - investor's contribution | ROL 14,240 mill.; |
| - state aid | ROL 100,767 mill. |
- (92) The beneficiary's contribution amounting ROL 105,785 mill represents 51.31% of overall restructuring cost and is ensured by capital infusion from the majority shareholder SC LIBERTATEA SA: ROL 14,240 mill.; assets sales, evaluated by authorized experts: ROL 24,600 mill.; depreciation amounting ROL 11,700 mill., bank credits contracted under market conditions: ROL 50,000 mill.
- (93) According to the provisions of art.15 of the *Regulation regarding the state aid for rescue and restructuring of firms in difficulty*, the amount and the intensity of the state aid must be limited to the minimum necessary to allow restructuring according to the existing financial resources of the company, of its shareholders or the group it is part of. In the case of S.C. SILVANIA FOREST S.A., the state aid's intensity,

calculated as ratio between the value of state aid and the total restructuring cost, is of 48.69%.

- (94) Therefore, the Competition Council considers as significant the beneficiary's contribution of 51.31% to the restructuring plan. This proves the trust in the practical value of restructuring as well as the fact that the amount and intensity of state aid are strictly limited to enable restructuring according to the existing financial resources of the company and of its majority shareholders. Thus, it is avoided a situation in which the company receives a cash surplus that could be used for financing aggressive activities resulting in market distortions.

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

- (95) SC SILVANIA FOREST SA has not received any other restructuring aid, thus being observed the provisions of art. 24 of the *Regulation on State aid for rescuing and restructuring of firms in difficulty*, which stipulates that the restructuring state aid has to be granted only once.

15. PART OF A GROUP OF COMPANIES

- (96) According to the provisions of art 2(5) of the Regulation, a company affiliated to a group, normally, is not eligible to be granted state aid for rescuing and restructuring, except the case when it is possible to demonstrate that the company's difficulties are its own and are not the result of a arbitrary cost allocations inside the group, and that the difficulties are too serious to be worked out by the group.
- (97) The fiscal facility granted at S.C. SILVANIA FOREST S.A.'s privatization refers to historical debts – effect of the economic outcomes obtained prior to the sale of the majority shares stock – therefore, those debts belong to the company itself.
- (98) The new majority shareholder, SC Libertatea SA Cluj, is owned by the Employees Association in proportion of 90.72%, and by SIF Banat Crisana in proportion of 9.28%. According to assessment of the data enclosed in SC LIBERTATEA SA's balance sheet, it resulted that in 2004 the company registered a turnover of ROL 230 billion and a profit of ROL 9.4 billion, with a number of 723 employees. The company did not distribute dividends, all the profit being used for capitalization. At the same time, besides the capitalization of the profit, SC LIBERTATEA SA had to contract loans, in order to cover its own needs for investment. As a result, one can see that the company's financial resources are limited and they are used for its current activity.
- (99) An assessment has been made concerning whether or not and if so, to what extend LIBERTATEA is able to make further contribution. In view of the level of the Libertatea's contribution (as indicated in the restructuring plan) it is considered that it is not able to contribute more resources.

(100) SC LIBERTATEA SA Cluj doesn't own any shares to other undertakings, except from those owned to S.C. SILVANIA FOREST S.A.

(101) From the above mentioned, the Competition Council concludes that the group that S.C. SILVANIA FOREST S.A. belongs to has not the financial possibility to solve the difficulties that company is confronted with, respectively to cover its debts in value of ROL 100,767 mill. Further, taking into account that the investor has engaged to contribute to the financing of the restructuring program with ROL 14,240 mill. it can be assumed that it had used all its available financial resources to support the economic straightening and the restructuring of S.C. SILVANIA FOREST SA.

16. ANNUAL MONITORING AND REPORTING

(102) According to the article 18 in the *Regulation on state aid in order to rescue and restructuring the undertakings in the difficulty*, the Competition Council is permanently monitoring the restructuring plan implementation in order to keep the fulfilling of the established objectives.

(103) The Competition Council will monitor the implementation of the restructuring program until the end of the restructuring period in order to make sure that there will be no increases of the production capacity, major deviations from achieving the restructuring measures, and that the aid shall not lead to additional liquidities which may be used for activities other than those in the restructuring plan.

17. CONCLUSION

(104) Taking into consideration the above presented grounds, the Competition Council finds that the individual state aid granted to S.C. SILVANIA FOREST S.A is compatible with the normal competitive environment, and does not significantly affects the trade with the Member States of the European Union.

DECIDES

Art. 1. The measure notified by the Authority for State Assets Recovery for S.C. SILVANIA FOREST S.A. Satu Mare represents a state aid according to art.2 (1) of the Law no. 143 / 1999 on state aid, with subsequent amendments and completions.

Art. 2. Pursuant to art.12 (2) c), corroborated with art. 14 (1) e) of Law no. 143 / 1999 on state aid, with subsequent amendments and completions, it is authorized the restructuring state aid for S.C. SILVANIA FOREST S.A. Satu Mare at its privatization under the observance of art.3 and art.4 of the present Decision.

Art. 3. The company is required to fully implement the consented Restructuring Plan.

Art. 4. The company shall reduce its production capacities until 2009, according to the consented Restructuring Plan.

Art. 5. In case of failure to observe the conditions imposed by the present Decision, provisions of art. 13 of Law no. 143 / 1999 on state aid, with further amendments and completions, shall apply.

Art. 6. The value of the State aid to be granted is of 100,767 million ROL.

Art. 7. The present Decision enters into force at the date of its communication.

Art. 8. According to provisions of art. 24 of Law no. 143 / 1999 on state aid, with subsequent amendments and completions, the Authority for State Assets Recovery shall submit to the Competition Council information concerning the granted state aid, in order to achieve its inventory and monitoring. Also, the Authority for State Assets Recovery shall submit to the Competition Council annual reports on the implementation of the Restructuring Plan. The first report shall be submitted within 6 months from the date of the Decision. Further reports must show that the company observed the compensatory measures consisting in the reduction of the production capacities, imposed by the present Decision.

Art. 9. According to the provisions of art. 29 of Law no. 143 / 1999 on State aid, with subsequent amendments and completions, the present Decision can be appealed, by the interested persons, in front of the Bucharest Court of Appeal, Administrative Contentious Department, within 30 days from its communication.

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

- The Authority for State Assets Recovery, Cpt. Av. Alexandru Serbanescu street, no. 50, sector 1, Bucuresti;
- S.C. SILVANIA FOREST S.A., Cerbului street, County Satu Mare, postal code 440564.

Art. 11. The General Secretariat and the Direction of Authorizing State Aid of the Competition Council will pursue the accomplishment of the present Decision.

PRESIDENT

MIHAI BERINDE