

**Decision of the Competition Council
no. 151 of 09.08.2005**

**concerning the notification of the Authority for State Assets Recovery regarding
State Aid granted to S.C. Comes S.A. Savinesti**

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 published in the Official Journal, Part I, no.370 on 3rd August 1999, amended and completed by Law no.603/2003;

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

Based on the provisions of the Regulation on state aid for rescuing and restructuring of firms in difficulty, published in Official Journal of Romania, Part I, no.1215 on 17 December 2004

On the following grounds,

1. Notification Procedure

(1) By the note no. VP₄/1632/22.06.2005 registered at the Competition Council with the no. RS-AS 49/22.06.2005, The Authority for State Assets Recovery (AVAS) notified to the Competition Council, on behalf of state aid grantors under art. 6 of Law 143/1999 on state aid, with subsequent amendments and completions the individual state aid for the restructuring of S.C. COMES S.A. Savinesti, in the context of its privatisation. In the given case, the state aid grantors are AVAS, the Ministry of Public Finance, the Ministry of Labour, Social Solidarity and Family, the Health Insurance National Home (CNAS) and the Local Council of Savinesti village.

(2) By the note DAAS/640/24.06.2005, AVAS was required for further information in order to demonstrate existing relationship between future market tendencies resulting from the Market Survey and the measures covered by the Restructuring Plan and how

will contribute the measures within the scope of the Restructuring Plan to the elimination of the negative issues leading to the firm difficulties status. Also, AVAS had to submit in relevant detail the beneficiary's certain sources, to demonstrate that the difficulties that the society has to face are specific to its activity, proving that they are too serious for being solved within the group. As well, AVAS had to provide other data with reference to the restructuring plan of S.C. COMES S.A. Savinesti. The notification became effective on the date the information was complete, i.e. on 22.07.2005.

2. Description of the state aid measures

2.1. Legal basis for state aid granting

- Law no.137/2002 (art. 18), regarding certain support measures for the privatisation acceleration;
- Decision no. 577/2002 (art. 281), regarding approval of the Methodological Norms in application of the Emergency Government Ordinance no.88/1997 concerning the undertakings privatization with subsequent amendments and completions;
- The Emergency Government Ordinance no. 26/2004 concerning certain measures for completing privatization of the undertakings existing in the APAPS portfolio and the consolidation of some privatizations, amended and completed by Law no. 442/2004 for the approval of EGO no.26.2004.

2.2. State financial support measures granted for the privatization of S.C. COMES S.A. Savinesti

(3) The financial support measures notified by AVAS are granted in the context of privatization of SC COMES SA Savinesti. Consequently, the company will benefit from the facilities provided by Law no. 137/2000, submitted in the presentation file and in the share sale-purchase agreement, respectively facilities for overdue debts owed to the consolidated state budget and to the local budgets.

(4) Thus, when it started its privatization, S.C. COMES S.A. Savinesti benefited from financial support state measures consisting in:

a) payment exemption of :

- 95% from the overdue debts owed to the state budget on 31.12.2001, in amount of ROL 2,485,589,433;
- the interests and penalties for late payments of the overdue debts owed to the state budget on 31.12.2001, of ROL 4,168,517,456;
- 95% from the debts owed to the both social state insurance budget and unemployment insurance budget, outstanding on 31.12.2001, of ROL 3,174,284,589;
- interests and penalties for late payments of the debts to both the social state insurance budget and the unemployment insurance budget, outstanding on 31.12.2001, of ROL 8,385,850,899;

- interests and penalties for late payments corresponding to the employer's contribution to the National Fund of Social Health Insurance budget, outstanding on 31.12.2001, amounting ROL 1,068,975,376;
- interests and penalties of the debts to both the social state insurance budget and the unemployment insurance budget, calculated until date of transfer of the ownership of shares, outstanding on 31.12.2001, in value of ROL 255,743,672;
- interests and any sort of penalties of the debts to both the social state insurance budget and the unemployment insurance budget, calculated between the date of transfer of the ownership of shares and the date of issue of common decision, in value of ROL 559,916,174;
- interests and any sort of penalties of the debts to both the social state insurance budget and the unemployment insurance budget, calculated and owed since 01.01.2002 until the signing date of the buying-selling contract of shares, in value of ROL 1,191,965,262;
- 10% from the value of the debts to the local budget, overdue on 31.12.2003, as well as the interests and the penalties of the debts to the local budget, outstanding on 31.12.2001, amounting ROL 62,343,893;

b) rescheduling of:

- 5% from the budget debts, outstanding on 31 December 2001, in the amount of ROL 130,820,496;
- the debts owed to the state budget, overdue on 31.12.2001, in the amount of ROL 113,176,988;
- 5% from the debts to the social state insurance budget and to the unemployment insurance budget, outstanding on 31.12.2001, in sum of ROL 167,067,610;
- the debts to the social state insurance budget and to the unemployment insurance budget, outstanding on 31.12.2001, in sum of ROL 593,592,919;
- the debts to the single fund of social health insurance budget, overdue on 31.12.2001, amounting ROL 1,306,789,963;
- the debts to the social state insurance budget and to the unemployment insurance budget calculated and owed since 1 January 2002 until the signing date of the share sale-purchase agreement, in the amount of ROL 1,579,295,790;
- the debts to the social state insurance budget and to the unemployment insurance budget, outstanding since the signing date of the share sale-purchase agreement until the date of transfer of the ownership of shares, totalizing ROL 267,220,960.

(5) To sum up, S.C. COMES S.A. Savinesti benefited from facilities in the privatization process, amounting ROL 25,511,691,470, as following:

- exemptions of debts, interests and penalties for late payments, in amount of ROL 21,353,186,744 ;
- debts rescheduling, in amount of ROL 4,158,504,726.

3. The beneficiary of state aid measures - S.C. COMES S.A. SAVINESTI

(6) S.C. COMES S.A. Savinesti, was founded in conformity with the Romanian Law as a joint-stock company. At that moment, the company had 1,191 employees. It is headquartered in Savinesti, Neamt district and it is registered at the Trade Registry under

no.J27/27/1991, having the Registry Unique Code no. R2662292. Originally, the company form part of a larger company (which was set up in 1980) what specialized in equipments and spare parts. Subsequently, the company was established based on the GD no.1213/20.11.1990.

(7) On 30.12.2002, the registered capital of the S.C. COMES S.A. Savinesti was ROL, 11,630.225 million, divided in 465,209 shares, with nominal value of ROL, 25,000/1 share, structured as it follows:

- | | |
|------------------|---------|
| - A.P.A.P.S. | 50.85%; |
| - SIF II Moldova | 44.36%; |
| - Managers, PPM | 4.79%. |

(8) The company - COMES SA Savinesti was privatized by concluding a share sale-purchase agreement, under no.27/30.12.2003 between AVAS and S.C. TESS S.A. Iasi. The transfer of the ownership of shares took place on 12.02.2003, the new majority shareholder of S.C. COMES S.A. Savinesti becoming S.C. TESS S.A. IASI.

(9) The company's main line of business is the designing, manufacturing, mending and trading of the equipments and spare parts used in chemical, petrochemical and oil refining industry, nuclear industry, energetic industry, metal-working industry, yarns and synthetic fibers industry, varnishes and paints industry, machine industry as well as providing service for the delivered equipments and products. S.C. COMES S.A. operates mainly, on the domestic market, stopped exporting its products during the second half of 2001.

(10) Besides its main object of activity, the company carries on secondary activities, such as: thermal and thermo chemical treatments, cladding, hammer forging practices, aluminum plating under plasma arc, destructive mechanical trials and tests, designing.

(11) The main groups of the products manufactured are:

- coil-heat exchangers and bundle of tubes for chemical and petrochemical industry;
- equipments and spares for nuclear industry;
- subassemblies for car building industry;
- spare parts and subassemblies for energetic industry ;
- spare parts for metal-working and steel industry;
- spare parts and subassemblies for textile industry ;
- equipments and spare parts for varnishes and paints industry;
- spare parts for cellulose and paper industry.

(12) On 30.12.2002 the company had 180 employees and its turnover was in sum of ROL 18,416.5 million, the correspondent in ROL of 527,407¹ EURO.

¹ The value in EURO was calculated at BNR rate, valid at 31.12.2002, of ROL 34,919 /1 EURO

4. Description of the privatization process

(13) – (20) [...]².

5. Assessment of the state aid measures – Are the measures state aid?

(21) The criteria which permit establishing 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.

(22) The financial support granted to SC COMES SA Savinesti, notified by AVAS consists in revenues foregone by the State. Therefore, public funds are involved.

(23) The financial support measures, granted on basis of the Law no.137/2002 regarding certain support measures for the privatization acceleration, with subsequent amendments and completions, are applied strictly to the undertakings that are going to be privatized, one of them being S.C. COMES S.A. Thus, the financial support granted to S.C. COMES S.A has a selective character.

(24) By granting financial support measures, it is created an economic advantage in favour of SC COMES SA, the company benefiting from debts write-offs owed to its budgetary creditors as well of exemptions of payment of interests and penalties for late payments corresponding to the outstanding budgetary debts. The granting of these facilities has a positive effect on economic-financial and cash-flow parameters. Therefore, company gets an advantage, in spite of its competitors.

(25) The selective nature of the support measures granted to the beneficiary, SC COMES SA may create conditions for the distortion of competition on the relevant markets. Also, it is no doubt that the financial support granted to SC COMES SA may affect trade with E.U. Member States, since the company’s products are in competition, mainly on the Romanian Market with similar products produced by EU companies.

(26) 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.

² Confidential data

6. The compatibility of state aid with the specific legislation

(27) The second article of the Law no. 143/1999 on state aid, with subsequent amendments and completions, provides that state aids granted by the State or from the State resources that distorts or threatens to distort competition or affects the trade between Romania and the Member States of the European Union, are considered incompatible with a normal competition environment.

(28) The state aid objective is the restructuring of SC COMES SA Savinesti in order to restore the company's viability at the end of the restructuring process. Once 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.

(29) The restructuring aid is based on a feasible, coherent and far-reaching 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, financial restructuring (capital injections, debt reduction) has to accompany the industrial restructuring.

(30) The Competition Council assesses the state aid granted to SC COMES SA according to the criteria set out in the *Regulation on state aid for rescuing and restructuring the firms in difficulty*, published in the Official Gazette, no.1215/17.12., issued in application of the Law no.143/1999 on state aid, with subsequent amendments and completions. In order to be deemed compatible with a normal competition environment, the state aid must meet all the criteria set out in the above- mentioned Regulation.

7. The eligibility of SC COMES S.A SAVINESTI – Firm in difficulty

(31) A company is eligible for rescue or restructuring aid provided that it is qualified 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.

(32) In the meaning of art.2 paras. (2) letter b) and c) of the *Regulation on state aid for rescuing and restructuring firms in difficulty*, a joint-stock company is regarded as being in difficulty when more than half of its registered capital, as shown in the accounting statements of the company was lost, and more than a quarter of that capital has been lost over the preceding 12 months. Whatever its legal status may be, a company meeting the

criteria for being the subject of collective insolvency and bankruptcy proceedings is also considered to be a firm in difficulty.

(33) In this respect, on basis of the data presented in the balance sheet, Competition Council noticed that SC COMES SA Savinesti recorded a total loss of its own capital during a single year, reaching negative values. A series of other financial-economic parameters such as the increase of losses, the decrease of the turnover, the increase of inventory, the decrease of the cash-flow, the increase of debts and of the financial costs emphasizes that the company was in difficulty when it started its privatization.

(34) Also, in the notification form, the state aid grantor underlines that the disastrous financial-economic situation of S.C. COMES S.A. describes all the aspects of a company subject to the insolvency, meeting all the requirements that could trigger the proceedings set out in *the Law no.64/1995 regarding the insolvency and bankruptcy procedures*, with subsequent amendments and completions.

(35) Taking into account the above mentioned facts, the Competition Council concludes that since the conditions set out in the Regulation are observed, the company, namely S.C. COMES S.A. Savinesti can be regarded as a firm in difficulty, in the meaning of its definition set out in *the Regulation on state aid for rescuing and restructuring the firms in difficulty*.

8. The history of the company's financial difficulties

(36) Although the company's turnover had a constant trend, the operating results of S.C. COMES S.A. have fallen down. Its own capital has recorded negative values due to the following: the aggregation of interests, fiscal penalties for the preceding periods and outstanding debts to the budget, caused by the lack of liquidities. Within the period 2000-2002, the debts volume recorded a 2.16 times increasing, exceeding in 2002 the equity capital value by 3.3 times. Also, the loss accumulated within 2000-2002, amounting ROL 20,821.1 million, represents 98.26% of the equity. Because of the difficult economic and financial situation, the company had to radically reduce its personnel. Thus, the number of employees had decreased from 1,191 to 337 persons in 1999 and to 180 in 2002. Under these conditions, APAPS, in position of a majority shareholder decided to offer for privatization the company.

(37) Causes leading to the company being in difficulty are as follows:

- the obsolete and ageing equipments, which determined a non satisfactory quality level of the products. As a result, the company recorded a significant number of refusals coming from foreign partners;
- the insufficiency of the professional training for the working staff;
- the unpredictable increase in prices of raw materials, materials, fuels and facilities;
- the decrease of the demands coming from textile, cellulose and paper industries;
- the lack of the firm orders caused by the economic recession at national level;

- the lack of funds undermining a continuous supply with raw materials and materials for the good functioning of the production process.

(38) Taking into consideration the company's difficult situation, APAPS decided to grant facilities for privatization of the company, unless the company would implement some restructuring measures. According to the information contained by the notification, the presentation file drawn-up for privatization was submitted to the potential investors and it included the facilities that would be granted for the payment of the debts owed to the state budget. Subsequently, these facilities were taken into consideration during the negotiations with the admitted tenderer.

(39) According to the share sale-purchase agreement, the investor accepted to make a contribution of ROL 37,640 million for the implementation of S.C COMES S.A. Restructuring Plan.

(40) The State contribution to the company's financial restructuring is in value of ROL 25,512 million. The state contribution relates exclusively to the company's historical debts, aggregate until the date of transfer of the ownership. Consequently, these debts will be exempted from payment.

9. The criteria to be fulfilled for the granting of state aid for restructuring.

(41) The state aid granted to S.C. COMES S.A is considered an individual aid for restructuring and it is based upon the existence of a Restructuring Plan, having as a main objective to restore the company's viability until the end of the restructuring period. The Restructuring Plan was drawn up by representatives of the company together with the buyer and AVAS.

(42) Thus, the Competition Council will assess the state aid granted to S.C. COMES S.A. Savinesti and its Restructuring Plan in accordance with the criteria stipulated in the Regulation on state aid for rescuing and restructuring firms in difficulty (herein after 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 Plan

(43) Taking into consideration the economic status of the company when started its privatization and in order to preclude the causes for which the company was in difficulty, the buyer of the majority stock of shares together with the representatives of the company

and AVAS have drawn up a Restructuring Plan covering the period 2003-2008, consisting of organizational, technological, 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.

(44) S.C COMES S.A Restructuring Plan will focus on the following areas:

- increasing the efficiency of the company's activity by modifying its organizational structure, creating directions, compartments and modules;
- modernizing the products existing in the firm's portfolio, by increasing quality, as a result of the investments ;
- implementing the quality management system and achieving the firm's certification according to the standard ISO 9001/2000;
- the development of marketing sector and of its necessary instruments for a better coverage of the market demand;
- updating and modernizing the existing technology on basis of the consented investments, which would lead to the increase of the output and profitability;
- reducing standstill or slow-movement of the inventory.

(45) The Restructuring Plan submitted by AVAS contained the circumstances responsible for considering the company as a firm in difficulty, as well as the measures that lead 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 or to the local budgets.

(46) The Restructuring Plan drafted with the buyer and AVAS covers the period 2003-2008. Briefly, the measures provided in the Restructuring Plan are presented below, as it follows:

Table no. 2 A summary of measures covered by the Restructuring Plan of SC COMES SA

[...]³

Source: Restructuring Plan of SC COMES SA Savinesti

(47) The restructuring Plan requires a financial effort of ROL 63,788 million. This Plan envisages to restore the viability of SC COMES SA Savinesti until 2008 (i.e., at the end of the Restructuring Plan).

10.1. The Relevant Markets

(48) SC COMES SA operates on the markets of producing and trading equipments and spare parts for chemical and petrochemical, nuclear, car building, energetic, textile, paints and varnishes, cellulose and paper industries.

³ Confidential data

(49) In accordance with the Market Survey, annexed to the Restructuring Plan of SC COMES SA, the market shares owned by the company on the domestic market are very low, i.e. below 1%.

Table no. 3 The market shares of S.C. COMES S.A. and of its main competitors

[...] ⁴

Source : The notification form

(50) The main competitors of S.C. COMES S.A. on the domestic market are traditional and appreciated actors in the Romanian economy: Griro Bucuresti, Vulcan Bucuresti, Uzuc Ploiesti. Also, mainly in the energetic, varnishes and paints industries, the dealers of foreign products have an increasing market share on the Romanian market, delivering products of higher quality resulting from industrial processes of higher technology.

(51) Concerning the external market, since the second half of 2001, the company gave up exporting, mainly due to the obsolete and ageing equipments which obstructed meeting the required level of quality. Also, its decision was based on the lack of cash, mandatory for a continuous provision with raw materials and for a good development of the production and the investments process.

(52) [...] ⁵.

10.2. Organizational and managerial restructuring

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

- developing the marketing branch and its specific instruments for a better coverage of the market demand;
- implementing an IT programme and the necessary technical equipment for an immediate approach of the problems specific to each sector;
- implementing the quality management system and achieving the company's certification according to the standard ISO 9001/2000;
- modifying the company's organizational structure on cost centers (modules), issuing a new organizational chart and organization of the main process lines on a restraint area, with the purpose of optimizing the manufacturing process; in this way, each compartment' financial-economic activity functions independently, by appreciating its own quality, efficiency and the profitability of each manufactured product.

(54) By implementing the measures for organizational and managerial restructuring it is aimed to create a quality Department which, through its subordinated units, would intervene in due time when some dysfunctions arise, in order to solve them.

⁴ Confidential data

⁵ Confidential data

Table no. 4 Organizational and managerial restructuring measures

[...] ⁶

Source : The Restructuring Plan of SC COMES SA Savinesti

10.3. Technical and technological Restructuring

(55) The technical and technological investments set out in the Restructuring Plan are of ROL 12,700 million, from which ROL 12,197 million represents investments consented by the buyer through the share sale-purchase agreement.

Table no. 5 Measures regarding Technical and Technological Restructuring

[...] ⁷

Source: The Restructuring Plan of SC COMES SA Savinesti

(56) The aim of the technical and technological investments included in the Restructuring Plan and of the re-dimensioning and reallocation of the capacities and endowment with specific modernized equipment is to accomplish the following objectives: improving of physical, mechanical and functional features of the products, increasing of processing efficiency and of the labour 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. Restructuring measures concerning the environmental protection

(57) According to the share sale-purchase agreement, the investments in the field of environment protection are to be made exclusively by the Buyer. These are in amount of ROL 11,991 million. These funds are provided for the fulfillment of the environmental obligations included in the conformity programs covered by environmental notices which contain obligations regarding protection of soil and air and also, the discharging of tail waters.

(58) As a result of the impact analysis on the environment, several environmental objectives were set up, as the following:

- monitoring water, air and soil quality;
- implementing a system for collecting the PBC oil;
- modernizing the local station for de-harmful tail waters;
- acquisition of underground tanks for collecting of tail oil and implementation of an oil separator on the final section of the sewerage;

⁶ Confidential data

⁷ Confidential data

- modernization of the installation for separating the dyes particles, of the installation for absorbing the powders from the sanding installation and from the metal covering workshops, caloric treatments and foundry;
- acquisition of systems for collecting-neutralizing the powders and the insults;
- construction of a pool for stocking the dehydrated mud from the local de-harmful station;
- improving the systems of collecting and stopping powders at sanding;
- endowment with devices for automatic stopping of the furnaces from the forge.

10.5. Financial Restructuring

(59) When it started its privatization, the company needed - beside the other restructuring measures assumed in the Restructuring Plan - a financial restructuring for the functioning at normal parameters of the production activity.

(60) One of the financial restructuring measures is represented by the state support granted to the company, namely the budgetary creditors giving up to certain sure incomes and granting them facilities to the payment of the obligations towards them (debts annulments and rescheduling) amounting ROL 25,511.2 million, as they have been detailed at paras. (4) and (5). Facilities are granted in order to ensure the company's viability.

(61) On the other hand, the Buyer will contribute to the company's financial restructuring, by supplementing working capital with ROL 11,816 million.

(62) The company will proceed also, to the selling of assets and machines-tools, in order to obtain resources necessary for completing the restructuring financial burden. The withdrawal from functioning of the equipment aims at correlating the output with the sales and at reducing the internal costs generated by their maintenance and mending. The tangible asstes are quashed and capitalized, by selling them as scrap iron to the authorized companies. The cost of the implementing measure is of ROL 89 million, supported from the beneficiary's own sources.

(63) Through its Restructuring Plan, the company has dimensioned on a realistic basis its restructuring financial sources, on the one hand based upon its own sources, and on the other hand, based upon Buyer's founds, that ensures the technological and environmental investments necessary for carrying out the activity.

(64) The Restructuring Plan, through its financial restructuring component allows the increasing and the stability of the cash-flow which will relieve and facilitate the company's financial activity. Thus, company will be able to reimburse its current debts to the State and to allocate necessary liquidities for making the planned and necessary investments, in order to develop and sustain the future production plan.

(65) The financial restructuring contains the following measures:

Table no. 6 Financial Restructuring Measures

[...] ⁸

Source: Restructuring Plan of SC COMES SA

11. Restoring the long term viability of the company

(66) Difficulties faced by SC COMES SA (mentioned at Chapter 8 – “The history of the company’s financial difficulties”) led to the extreme restraint of the activity, simultaneously with the aggregation of debts owed to the State budget, to which delay increases and penalties for late payment have been added, by considerably exceeding the value of owed and outstanding debts.

(67) In 2003, SC COMES SA was privatized. In order to overcome the difficult situation, the company elaborated together with the Buyer and the AVAS, a restructuring plan covering the period 2003-2008. The summary of the measures covered by the Restructuring Plan of SC COMES SA Savinesti was presented within Chapter 10.

(68) The analysis of the Restructuring Plan and its contribution to the long- term restoring of the viability of SC COMES SA is based on the provisions of art. 13 of the Regulation on State aid for rescuing and restructuring of firms in difficulty.

(69) According to art. 13 of the Regulation on State aid for rescuing and restructuring of firms in difficulty, the granting of the restructuring aid depends on the implementation of the Restructuring Plan which is the base for the Competition Council’ assessment on the state aid. The Restructuring Plan, which has to last as shortly as possible, must provide for the withdrawal from loss-making activities and for the long term viability of the company, ensuring the functioning through its own resources. The Restructuring Plan should rely on a realistic assessment of market conditions. The restoring of the viability could result mainly from the internal measures covered by the Plan, by taking also into consideration the external factors, such as prices and demand fluctuation, on which the company has no determinant influence.

(70) The Restructuring Plan of SC COMES SA was based upon the technical and economic data, which illustrated the company’s activity before privatization. This plan was drawn up following a diagnosis that showed the strong and the weak points 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.

(71) The strategy of SC COMES SA aims at maintaining the strong points, such as: development of the management activity based on coherent and realistic strategies, plans, programs and policies, with established objectives, modalities, resources, terms and responsibilities; flexibility and capacity of rapid accommodation in switching the

⁸ Confidential data

manufacture from one product to another; good relationship with customers; specialized staff and endowment required for the appliance of its own systems of mending, including major mending; existence of authorized laboratories working with specialized staff, which permit the developing of the activities and of the operations under ISCIR regime; existence of a conformity plan with clear environmental objectives.

(72) At the same time, the strategy of SC COMES SA aims at stopping and combating, through adequate measures, the weak points, such as: lack of a marketing compartment; lack of economies of scale in the production process, due to the particular endowment and to the equipment displaying; high expenditures with the supply, due to the large range of materials, necessary in rather low quantities; the limited maintenance services in the supply of equipment, which cover only the maintenance and the exploitation of the equipment, without any periodical overhauling; advanced deterioration of the technical park.

(73) As a consequence of the Restructuring Plan, the company withdraws from the loss-making activities. Thus, the Thin Mechanical Section and the Foundry Workshop would be closed, as they were considered un-viable sectors, due to their old and big energy consuming technologies and equipment. Also, the chroming, zincking, eloxation and passivation activities will be abandoned, due to the high costs for the maintenance of the facilities. The company's production will be focused on the development of new products required on the market, such as those destined for nuclear industry or chemical and petrochemical industry. This way, the activity would be directed towards market areas with high demand – as it results from the market survey - which could lead to the profitability of the company.

(74) In accordance with all the above, the company envisaged several objectives, in order to restore its viability, as result of implementing the Restructuring Plan, as following:

- reaching an operational equilibrium, with a view towards profit making;
- up-dating the existing technologies, according to the consented investment plan;
- making activities efficient by reducing costs;
- increasing work efficiency, through making profitable and reorganizing the company's activity and the production processes;
- externalizing the un-efficient activities;
- manufacturing of new products and diversifying sale markets;
- improving the commercial and marketing strategy, for a better covering of the market demand;
- improving working conditions for all the employees;
- increasing the degree of using the existing production capacities;
- increasing the debts reimbursement, simultaneously with reducing the arrears;
- complying with international standards on environmental protection and full elimination of polluting factors produced by the company.

(75) Within the period 2003-2008, through the implementation of measures included in the Restructuring Plan, it has been foreseen – even in the pessimistic scenario - a progress of the economic-financial indicators as it is presented below. The implementation of

measures will be carried out on the one hand, by the company and the Buyer, through their own sources and, on the other hand, by the State, through the facilities granted to the company for reimbursement of the budgetary debts.

Table no. 7 The forecast of the economic-financial indicators, as a result of the implementation of the restructuring measures – the pessimistic scenario

[...] ⁹

Source: Restructuring Plan of SC COMES SA Savinesti

(76) 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.

Actually, the data from the balance sheet themselves prove the company's positive evolution:

- in 2003 (the first year of the restructuring), the company registered losses amounting ROL 17,991 mil; these were due, on one hand, to the costs with the accomplished investments and on the other hand, to external factors, upon which the company has no influence what so ever (price increase for raw materials, materials and utilities);

- in 2004, the company tried to recover from the previous delays so that it registered a profit of ROL 401 mil.; this is mostly due to the investment efforts enclosed in the restructuring plan, measures improving the productivity and the activity's efficiency but also to the company giving up to the activities generating losses.

(77) 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 Target economic-financial indicators

[...] ¹⁰

Source: Restructuring Plan of SC COMES SA Savinesti

⁹ Confidential data

¹⁰ Confidential data

(78) Taking into account the above presented data, the Competition Council considers that the Restructuring Plan of SC COMES SA Savinesti was based upon the technical and economic data which illustrates the company's activity during the period prior to privatization. Also, the Restructuring Plan was based upon the reasons that led to the difficulties faced by the company (para.37). The Plan was based on the market survey, on the SWOT analysis, as well as on the pragmatic forecast of the functioning conditions in the future and the results already registered by the company confirm that it is moving toward a return to viability.

(79) Also, it is noticed that the implementation of the proposed Restructuring Plan would lead to the restoring of the long term viability of SC COMES SA Savinesti. The viability of the company results, mainly, from the internal measures included in the Restructuring Plan, without depending on external factors such as prices and demand fluctuation. The Restructuring Plan implemented by the company would ensure a radical change allowing it, at the end of the restructuring process, to cover entirely its costs and to compete by its own forces on the open market.

12. Preventing any excessive distortion of the competition (Compensatory measures)

(80) 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.

(81) SC COMES SA Savinesti holds low market shares on the relevant markets where it operates, namely under 1%. Consequently, on the basis of the provisions of art. 14 of the Regulation on State aid for rescuing and restructuring of firms in difficulty, which stipulate that the compensatory measures will be proportional with the distorting effects of state aid over competition and, especially, to the size and relative importance of the affected markets, the Competition Council considers that, in the case of SC COMES SA Savinesti, no substantial capacity production reductions is required.

(82) The measures to be taken by the company until the end of the restructuring period, in order to avoid competition distortion, consist of an irreversible reduction in the production capacity, namely workshops and production machinery.

(83) Following the restraint of the activity, pieces of the relevant equipment contributing to the achievement of the main activity, will be wound-up. These tangible goods consist of moulds, lathes, milling machines, piercing machines, grinding machines, pressing machines, etc.

(84) The irreversible cut of the production capacity is a part of the restructuring plan. The irreversible cut of viable production capacity consists in the decrease by 15.3%, in comparison with the level recorded in 2003, of the total production capacity on each of the markets where the company operates. The production capacity withdrawn from functioning, will be sold/quashed and capitalized as scrap iron.

(85) According to the Restructuring Plan, SC COMES SA Savinesti does not augment its market shares, but it is going to preserve its market segment where it is currently operating.

(86) There are significant differences between the designed production capacity of SC COMES SA Savinesti and the functioning one. The company is not going to develop its production capacities, but to better use the remaining operating capacities.

(87) As a result of implementing the measures within the Restructuring Plan, the production capacities and their level of exploitation will be as following:

Table no. 9 Level of exploitation of the production capacities between 2003-2008

[...] ¹¹

Source: Additional information

(88) According to its Restructuring Plan, SC COMES SA Savinesti aims at accruing the level of exploitation of the production capacities. Thus, the level of exploitation of the production capacities is going to increase, in comparison with the level recorded in 2003, (i.e. since the beginning of the Restructuring Plan), reaching a level of approx. 90% in 2008, as the company committed itself to the total and irreversible cut of the production capacities by 15.3% on the main markets where it operates.

(89) Taking into account all the above mentioned, the Competition Council estimates that the state aid will be used only for restoring the company viability, and it will not allow to the beneficiary to extend its production capacity during the implementation of the Restructuring Plan.

13. State aid limited to what is absolutely necessary (State aid proportionality)

(90) The analysis of the difficult economic and financial situation faced by the company prior to its privatization underlined that its privatization and granting the state aid for restructuring, by means of the facilities, were both required. This way, the company will remain within the economic circuit and its viability will be restored.

(91) According to provisions of art. 15 of the Regulation on State aid for rescuing and restructuring of firms in difficulty, the State aid amount and intensity have to be limited to what is absolutely necessary, so that it could be possible the restructuring using the

¹¹ Confidential data

company's and shareholders' existing financial resources. The state aid beneficiary has to significantly contribute, via its own resources, to the financing of the Restructuring Plan, including the sale of unessential assets for the company's survival, or by external financing got under market terms. According to the provisions of art.15 (2) of the Regulation, a contribution of at least 50% is considered satisfactory, in the case of large companies.

(92) The total restructuring cost of SC COMES SA is of ROL 63,788 million, and consists of:

- organizational restructuring cost ROL 1,680.000 million
- technological restructuring cost ROL 12,700.000 million
- environmental restructuring cost ROL 11,991.000 million
- financial restructuring cost ROL 36,417.000 million

(93) From the total restructuring cost, in value of ROL 63.788 million, 0.99% will be financed through the company's own sources, 59.01% through the own sources of the majority shares' buyer, and 40.00% through the financial support granted by the State.

(94) The beneficiary's own contribution, of ROL 38,276 million, represents 60% out of the total restructuring costs, and it will be covered by:

- the investor's financial contribution, committed when the privatization was decided - ROL 37,640 million
- the company's own sources, obtained from capitalization of tangible goods – ROL 636 million.

(95) According to the provisions of art.15 of the Regulation regarding the state aid for rescuing and restructuring of firms in difficulty, the amount and the intensity of the state aid must be limited to the minimum required 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 SC COMES SA Savinesti, the state aid intensity, calculated as ratio between the value of state aid and the total restructuring cost, is of 40.00%.

(96) Against this background, the Competition Council appreciates that the beneficiary's contribution of 60.00%, to the implementation of the Restructuring Plan, can be deemed significant. That financial contribution is a proof of the beneficiary's belief in the practical value of the restructuring, and of the strict observance of the threshold of the state aid amount and intensity, so as to encourage restructuring using the company's and majority shareholder's existing financial resources. Thus, the situation where the company would have an excess of liquidities that could be used for aggressive trading activities, having as a potential effect to distort the market, is prevented.

14. Observance of "First time, last time" Principle

(97) SC COMES SA Savinesti 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

(98) 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.

(99) Fiscal facilities granted at the privatization of SC COMES SA refer to the historical debts – effect of the economic outcomes obtained prior to the sale of the majority shares stock – therefore, those debts belong to SC COMES SA itself.

(100) From the analysis of data included in the balance sheets of the companies belonging to the CONEX Group, it results that their available financial resources are limited, and are aimed at their current activity. [...] ¹².

(101) Under these circumstances, the Competition Council notes that the majority shareholders could not cope with both the financial difficulties of SC COMES SA and its restructuring, without a substantial State financial support, as the company' debts to the State budget and to the local budgets are in total amount of 25,512 million. [...] ¹³. Taking into account the financial resources of the CONEX Group, this contribution is deemed to be significant.

(102) Taking into account the above mentioned aspects, the Competition Council concludes that the Group which SC COMES SA belongs to, has not enough financial power to solve the difficulties of the company, namely to cover its debts to the State, in value of ROL 25,512 million. Moreover, due to the fact that the investor has committed itself to contribute to the financing of the Restructuring Plan with ROL 37,640 million, it can be appreciated that it has used all its available financial resources in order to support the economic recovering and the restructuring of SC COMES SA.

16. Monitoring and Annual Reporting

(103) According to provisions of art.18 of the Regulation on State aid for rescuing and restructuring of firms in difficulty, the Competition Council permanently monitors the implementation of the Restructuring Plan, in order to ensure the fulfillment of the established objectives.

¹² Confidential data

¹³ Confidential data

(104) The Competition Council shall 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 Program.

17. Conclusions

(105) Taking into consideration the above presented grounds, the Competition Council finds that the individual state aid granted to SC COMES SA 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 SC COMES SA Savinesti, 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 SC COMES SA Savinesti 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 2008, 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 ROL 25,511,691,470.

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 shall be communicated, by the General Secretariat of the Competition Council, to:

- The Authority for State Assets Recovery, 50, Cpt. Av. Alexandru Serbanescu Street, no. 50, 1st Sector, Bucharest
- SC COMES SA Savinesti, 1, Uzinei Street, Savinesti, Neamt District.

Art. 11. The General Secretary and the Directorate for State Aid Authorizing of the Competition Council shall pursue the accomplishment of the present Decision.