

DECISION OF THE COMPETITION COUNCIL
No 162 of 31.08.2005

regarding the state aid notified by the
Authority for the Recovery of State Assets
granted to S.C. GEROM S.A. Buzau

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 address no. VP₄/1645/22.06.2005, registered at The Competition Council with no. RS-AS no. 50/22.06.2005, The Authority for the Recovery of State Assets (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. GEROM S.A. Buzau, in context of its privatization. In the given case, the state aid grantors are AVAS, the Ministry of Public Finance and S.C. Distrigaz Sud S.A.

(2) By note DAAS/644/24.06.2005 further information was requested from AVAS in order to demonstrate how the measures will contribute to the Restructuring Plan and the elimination of the negative issues leading to the firm's difficulty status. Also, AVAS had

to submit information demonstrating that the beneficiary's difficulties are specific to its activity and are too serious to be dealt with by the group. Also, AVAS had to provide data with reference to the restructuring plan of S.C. GEROM S.A. Buzau. The notification became effective on the date the information was accurate and complete, respectively on 18.08.2005.

2. DESCRIPTION OF THE STATE AID MEASURES

2.1 Legal basis for state aid measures

- Law no. 137/2002 (art. 18) regarding certain support measures for the speeding up of privatisation;
- G.D. no. 577/2002 (art. 281) regarding the approval of the Methodological Norms in application of the Government Emergency Ordinance no. 88/1997 concerning the undertakings privatization with subsequent amendments and completions;
- The Government Emergency Ordinance no. 26/2004 (art. 32) concerning certain measures for completing the 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 Financial support measures granted by the state for the privatization of S.C. GEROM S.A. Buzau

(3) The financial support measures notified by AVAS are granted in the context of the privatization of S.C. GEROM S.A. Buzau, the company is to benefit from the facilities forecasted by Law no. 137/2002 and mentioned in the presentation file and the share purchase and sale contract, respectively facilities for the payment of past due obligations to the consolidated state budget, to the utilities providers and to AVAS.

(4) Thus, at the date of privatization, S.C. GEROM S.A. Buzau was the beneficiary of financial support measures, as follows:

Table no. 1 Measures of financial support granted at the privatization of S.C. GEROM S.A.

[...]¹

Source: Notification form submitted by AVAS

(5) Thus, S.C. GEROM S.A. Buzau benefited at privatization from payment facilities in the amount of ROL 151,958,673,094 consisting of:

- Exemption of debts, interest and delay penalties in amount of ROL 75,456,450,362;
- Debts conversion into shares in amount of ROL 75,939,556,896;
- Payment rescheduling in amount of ROL 562,665,836.

3. THE BENEFICIARY OF STATE AID MEASURES – S.C. GEROM S.A. BUZAU

¹ Confidential data

3.1. Preamble

(6) S.C. GEROM S.A. Buzau was set up according to Romanian law, as a joint-stock company with headquarters in Buzau city, recorded at The Commerce Register with registration number J10/601/1991, with Unique Registration Code no. R3109801.

(7) Prior to privatization the company was recorded at the Trade Register with a shareholders equity of ROL 45,533.3 million divided in 1,913,726 shares having a nominal value of ROL 23,793, held by:

- A.P.A.P.S.	51.35%;
- SIF Muntenia	38.80%;
- Other shareholders	9.85%.

(8) S.C. GEROM S.A Buzau was privatized through the shares purchase and sale contract at 13.09.2002 concluded between AVAS and S.C. IAMSAT Prodconstruct S.A. Pitesti. At privatization a capital increase was performed at GEROM with the value of the receivable held by AVAB converted into shares (see point 1 in Table no. 1). The share ownership transfer was made at 24.02.2003, the new majority shareholder of S.C. GEROM S.A. Buzau became S.C. IAMSAT Prodconstruct S.A. Pitesti with a holding of 86.21% from the outstanding shares.

(9) The company's principal activity is the production and processing of glass for the vehicles, home appliances and furniture. SC GEROM SA operates mainly for the domestic market. In 2002 (the privatization year), domestic deliveries represented 99.57% of the total company's activities. Besides the core business, the company carries out additional activities e.g.: sale of float glass, glass trimmings, mirrors and glass shiver.

(10) SC GEROM SA manufactures and sells the following range of products:

- Duplex glass – safety glass with high mechanical resistance, designed mainly for vehicle wind shields; in case of impact, the shiver stay stick to the poly-vynil-butiral foil, in principal for auto windscreens; all auto windscreens made by the company are certified by French and Belgian institutions.
- Safety glass – glass with high mechanical and thermo resistance, 6-8 times higher than regular glass; in case of impact the resulted shivers are not sharply edged; the entire safety glass range designed for car assembly is certified the Romanian Auto Register;
- Serigraphic safety glass – security glass responding to clients esthetics demands; the serigraphic safety glass are resistant at the chemical agents (detergents, foodstuff) and are mainly designated for equipping home appliances;
- Thermo insulated glass – with thermo and phonic properties offering a good insulation; thermo insulated glass realized by S.C. GEROM S.A. are designated for refrigerating equipment and railway transportation means.

(11) After 1990, because of the difficult situation for the entire Romanian economy within the period of transition but also, in case of GEROM, giving the fact that the glass, bricks and glass jars production technology was old, consuming much energy and materials, the company's lack of resources for applying proper restructuring and modernizing measures, the economic and financial situation of SC GEROM SA entered into a decline period.

(12) Briefly, at the moment of its privatization, the company was in a very difficult situation, caused by the following :

- advanced worn out and obsolescence ratio of technology which was at levels from 1970-1980;
- incorrect distribution of the personnel, which led to costs uncovered by production revenues;
- preference of the investors for imported products with a higher price/quality ratio;
- unforeseeable increases of materials, fuels and utilities prices;
- advanced decapitalization of the company;
- lack of financial resources for modernization and acquisition of equipment;
- the national economic situation: financial blockage, increased inflation rate;
- lack of funds for constant supply of raw materials in order to carry out the process production in normal conditions.

(13) As an effect of the causes listed above, between 1999 and 2001, the effective turnover value and the operational results of SC GEROM SA was in decline. The capital had negative values due to the accumulation of interest and penalties corresponding to the precedent years and overdue budgetary debts caused by the lack of finance. In this period, the debts volume had an increase of 59% and during 2001 reached 4.1 times the value of the shareholders equity. Also, the total losses of ROL 89,024 million accumulated in this period represents almost the double of the shareholders equity, as it was registered in the financial statements prior to privatization. In these conditions, APAPS as a majority shareholder, decided to privatize the company.

(14) Also, because of the lack of resources for the modernization of the equipment, which had an endowment of the level of the '80s, the company was not selected by SC Automobile Dacia SA - one of the most important clients of the company, as a supplier for the new models Dacia, Solenza and Logan.

(15) Taking into account this difficult situation, APAPS decided to grant several facilities at the privatization of the company, this being conditioned by the implementation of restructuring measures. According to the information from the AVAS notification, the privatization file informed the potential investors of the granting of facilities for the payment of budgetary debts. Later, these facilities were taking into account at the moment of negotiation with the selected bidder.

(16) At the time of the privatization the company had 459 employees and the sales were of ROL 134,080 million, the equivalent of EURO 3,798,515² bringing the company with in the definition of a large enterprise category.

3.2. Description of the privatization process

(17) The process of the company's privatization started with the publication in the local and central press (local paper "Opinia", national paper "Evenimentul Zilei" and international newspaper "Financial Times") on 20.03.2002 of the sale announcement for a minority share stake. The presentation file prepared for the sale of the shares owned by AVAS to SC GEROM S.A. Buzau included information regarding the economic and financial, legal and environmental information and facilities that the company might have benefit from in the case of concluding the privatization contract.

(18) Five presentation files were bought by SC IAMSAT PRODCONSTUCT SA Pitesti, SC BEGACOM SA Timisoara, SC GEODAN SRL Buzau, SC INTEGRAL SA Buzau and a natural person by the name of Chelu Catalin Constantin. Through the sale offer, potential investors were allowed to conduct an audit of the company, with a view to obtaining the necessary information about the company and to be able to make a purchase offer. Also, every potential buyer was informed of the fact that the company will benefit from facilities for overdue obligations according to Law no.137/2002. AVAS wanted to underline that all possible bidders had enough time to prepare their bidder and none of them requested the prolongement of the time limit for due diligence.

(19) Based on the participation documents were selected two eligible offers with which they started the negotiations. According to the data submitted by AVAS, the negotiations took place based on the price and the volume of the technological and environmental investments, aiming the improvement of the buying bidder.

(20) Following the negotiations, on 22.08.2002, SC IAMSAT PRODCONSTRUCT SA Pitesti, the company with the best offer, was declared winner.

(21) [...]³.

(22) According to the presented data, AVAS emphasized that the bidding took place in an open, transparent manner, and all the possible bidders had enough time to make a proper assessment of the company, as a base of their bid. SC GEROM SA was sold to the investor submitting the best bidder.

(23) On the other side, the Competition Council notes that the company's privatization process was accompanied by negotiations on price and the investments' amount. Therefore, the sale was conditioned by the implementing of certain measures for re-technology and making certain investments in order to comply with the environmental standards. As a result, it can be concluded that SC GEROM SA' privatization was

² The value in EURO was calculated at BNR rate, valid at 24.02.2003, of ROL 35,298 /1 EURO

³ Confidential data

accompanied by measures which can fall under the incidence of the Law no. 143/1999 on the state aid, with the subsequent amendments and completions.

(24) The economic concentration resulted from the take over of SC GEROM SA Buzau, by SC IAMSAT PRODCONSTRUCT SA Pitesti was notified to the Competition Council and authorized through the Decision no. 198/12.05.2003.

(25) Information from the notification form stated that the buyer, SC IAMSAT PRODCONSTRUCT SA Pitesti, is part of a group of companies whose economic and financial position is shown in the following table:

Table no. 2 – The financial situation of the group of companies of which SC IAMSAT PRODCONSTRUCT SA Pitesti is a part of (2002)

No.	Company name	Net result Profit/loss (ROL million)
1.	SINTER REF S.A. Azuga	-3,000
2.	PETROCONSTRUCT SA Pitesti	12,010.4
3.	FORAJ SONDE S.A. Braila	11,660
4.	BULF DRILLING & OIL SERVICII SRL Pitesti	18,134.1
5.	CONSTRUCTII HIDROTEHNICE INDUSTRIALE SI CIVILE SRL Pitesti	0
6.	IAMSAT PRODCONSTRUCT SA Pitesti	3,662.9
7.	CEREALCOM SRL Tg. Carbunesti	2,208
8.	GAZOIL DRILLING S.A. Tg. Carbunesti	1,808.2
9.	SAB SRL Pitesti - microintreprindere	1,098.2
10.	PETROM GAS SRL Bucuresti	15,845.3
	TOTAL PROFIT	63,427.1
	TOTAL DEBTS RELATED TO THE GROUP	868,523.2

Source: Supplementary information

(26) The fact that almost all the companies from the Group registered profit is a positive sign. Nether the less, it can be seen that the debts' level per total Group, mainly representing debts towards the suppliers, different creditors and banks, is a high one, being of ROL 868,523.2 mil. on 31.12.2002.

4. THE RELEVANT MARKETS

(27) SC GEROM SA operates in two market areas: the auto glass market (first fitting and spare parts) and the home appliances glass market (refrigerators, cookers, cooling devices, cold glass cases).

(28) According to the market study attached to the restructuring plan of GEROM SA, the company's market share is at follows:

Table no. 3. Market levels for SC GEROM SA and its main competitors

[...] ⁴

Source: The Notification Form

(29) The market study reveals the fact that the markets in which the company operates are growing in a sustained manner. The main clients of the company (manufacturers of vehicles and home appliances) were taken over by powerful groups, which generated a growth of their production and therefore an ascending trend, quantitative as well as qualitative, of their requirements for materials and raw materials.

(30) Forecasts for the next 5 years for the auto windscreens and for home appliances are promising, most of the manufacturing companies on the market having sound strategies with important increases, even doubling of the output and diversification of the product range.

(31) [...] ⁵.

(32) Taking into account that both the existing opportunities and investments to be achieved in this field to meet the increased requirements of the market, the implementation of costs reducing measures is absolutely necessary, together with the growth of productivity and the permanent improvement of the quality indicators.

5. DESCRIPTION OF THE RESTRUCTURING PLAN

(33) Taking into account the situation of the company at the moment of the privatization and in order to remove the causes of the difficulties, the Buyer of the major package of shares, with the company and AVAS, elaborated a restructuring plan for 2003-2007, composed of organizational, technological, environmental and financial measures, on the basis of a market study, taking into account the present situation of the offer and demand on the relevant market of the product and its further evolution, as well as the SWOT analysis.

(34) The restructuring of GEROM SA focuses on the following directions:

- increase in efficiency through the restructuring of the company and the correlation of the employees' number with the production programme;
- modernization of manufactured products by increase of the quality, as a result of the planned investments;
- implementation of the quality management system and the certification of the company according to ISO 9001/2000 standards;
- modernization of the existing technologies, according to the investment programme, which will lead to higher efficiency and profitability;

⁴ Confidential data

⁵ Confidential data

- marketing strategy: the regaining of the supplier position for the new Dacia models and the improvement of the company's capability in order to meet the demands of the Romanian home appliances producers.

(35) The restructuring plan submitted by Authority for State Assets Recovery (AVAS) contains both the causes that drove to the difficulties of SC GEROM SA and measures to ensure the long term viability of the firm. Through the application of the measures contained in the restructuring programme, AVAS stipulates that the company will register a profit by the end of the restructuring period and will ensure their own financial resources for the development of the activity in a proper way, without debts to the state budget or to the local budgets.

(36) The reorganisation program elaborated together with the Buyer and AVAS covers the period 2003 – 2007. The measures contained in the restructuring programme are presented as follows:

Table no. 4 Measures contained in the restructuring plan of SC GEROM SA -ROL million-

No.	Measures	Evaluation- implementation costs		
		Own Sources	Investor Sources	State Aid
1	Organisation and managerial measures	6,237.2	-	-
2	Technical and technological measures	44,400	130,000	-
3	Environment protection measures	1,200	8,000	-
4	Financial restructuring measures	274	-	151,958.7
	TOTAL	52,111.2	138,000	151,958.7
TOTAL RESTRUCTURING AMOUNT		342,069.9		

Source: The Restructuring Programme of SC GEROM SA Buzau

(37) The achievement of the restructuring program requires a financial investment of ROL 342,069.9 million. This plan will restore the viability of SC GEROM SA Buzau in 2007 (at the end of the restructuring period).

5.1. Organizational and managerial restructuring

(38) The organizational restructuring of the company refers, first of all, to the correlation of the number of employees with the production programme - stipulated to be realised by the company and absorbed by the market – through the dismissal of the employees. 150 people are being laid off, reaching thus from 470 employees to 320 employees; the cost of this measure amounts to ROL 5,637.2 million, funds insured from

the SC Gerom SA' own sources. The measure has reduced salary costs by ROL 2,067 million in the first year after implementation.

(39) The managerial restructuring refers to the certification of the quality management system ISO 9001/ 2000, because the main clients of the company (Dacia, Electrolux Romania, Mondial Elite Bucharest) stipulate the accreditation as a condition of being a supplier. This measure, having an implementation cost of ROL 100 million, supported by the beneficiary of the state aid, has the effect of increasing the profit by ROL 100 million in the first year after the application.

(40) Also, the implementation and certification of the management system of the environment quality ISO 14001/1997 is being imposed, determined by the alignment of the national legislation with the European Union Legislation regarding the environment protection and by the fact that the company's clients had already implemented the RoHs Directive for the restriction of using certain dangerous substances. The cost of the implementation is ROL 300 million has been borne by the state aid beneficiary.

(41) Taking into account the requests for achieving certain auto items after functional plans, the necessity of designing and executing films for serigraphy, the necessity for assimilating new products for the clients of the company and the outsourcing of the auto glass designing activities by Dacia, the development of the designing process at GEROM requires the setting up of a design office. The cost of implementing this measure is ROL 200 million insured by the state aid beneficiary and will increase the profit with ROL 150 million in the first year after the application.

Table no. 5 Measures regarding the organisation and managerial restructuring

Measure	Implementation Effort	Financing		
		Own sources	Buyer's sources	State aid
Certification of the quality management system - ISO 9001/2000	100	100	-	-
Implementation and certification of the environment quality management – ISO 14001/ 1997	300	300	-	-
Organising and developing of designing, employees training	200	200	-	-
Restructuring of 150 places of work in the processing glass field	5,637.2	5,367.2	-	-
TOTAL	6,237.2	6,237.2	-	-

Source: The Restructuring Programme of SC GEROM SA Buzau

5.2. Technical and technological restructuring

(42) Considering the main activity object of the company, the process of cutting glass is essential in the technological process leading to important features for the final product. In the GEROM case, the process of cutting glass with different geometries is executed manually on cutting tables and pantographs. Taking into account that the market where the company operates is in a continuous evolution, the clients' demands regarding the dimensioning errors being more severe, the company is required to purchase a high precision numeric control cutting machine. The cost of implementing this measure is of ROL 1,800 million, borne by the state aid beneficiary and leads to a profit increase of ROL 300 million in the first year after the application.

(43) The increased demands of the company's clients, referring to the products made of reflexive glass and of metallic deposit glass demand special conditions for the processing and washing phase. Thus, the purchase of a bilateral processing machine and a washing machine for house keeping glass is necessary, the cost being of ROL 5,000 million leading to a profit increase of ROL 300 million.

(44) The washing glass phase is highly important in the technological flow because it influences not only the technological phases, but the finishing of the products. The clients impose the use of quality water, such as demineralised water, in order to get a perfectly clean surface. In order to achieve this quality level, the purchase of an automatic installation for the preparation of demineralised water in amount of ROL 600 million is required.

(45) The evolution of the form and design of auto transport vehicles imposed the redesigning of glass that must answer the following exigencies: thickness, wideness etc. Also, in the European integration context, there are demands regarding the security of constructions. The level of the technology of securitizing at GEROM cannot achieve glass meeting the new requests. This imposes buying a securitizing oven for float glass (including reflexive windows, Low-E). The cost of this measure, which will lead to the reducing of energy costs up to 50%, is of ROL 29,000 million borne by the state aid beneficiary.

(46) The buying of a securitizing oven for float glass is the last phase in the redesigning of the technological process for home appliances glass. The optimising of the flow for securitized serigraphic glass for home appliances imposes the relaying of the serigraphic installations in a special purpose hall and the assurance of the optimal climate conditions (constant temperature of 20-22 Degrees Celsius) which will be achieved by installing a warm air generator and A/C equipment. The cost of this measure, which will reduce the manufacturing costs and make a profit of ROL 100 million in the first year after the implementation, is of ROL 8,000 million borne by the state aid beneficiary.

(47) The securitization technology is limited at minimum thickness of 4 mm, single sided curving with a maximum arrow of 40 mm. The evolution of aerodynamics and the design of auto vehicles impose the redesigning of curved glass for autos which must correspond to certain demands of quality (the glass thickness of 3.2 mm, complex geometry and two sided, with arrows of about 100 mm) according to European

Regulations. Thus, it is necessary to purchase of an oven for securing curved glass for side and rear windows, including 3.2 mm thick windows. The cost of implementing this measure, which will have the effect of reducing the energy costs with 30% and obtaining a profit of ROL 500 million, is of ROL 130,000 million borne by the Buyer.

(48) The technological investments from the restructuring plan are in total amount of ROL 174,400 million, from which ROL 130,000 million represent investments assumed by the Buyer through the share purchase and sale contract.

Table no. 6 Measures regarding the technical and technological restructuring **-ROL million-**

Measure	Implementation Effort	Financing		
		Own Sources	Buyer's Sources	State aid
Buying an automatic machine with numbering control for cutting glass different forms	1,800	1,800	-	-
Buying and mounting of a machine for bilateral processing and washing machine for home appliances glass	5,000	5,000	-	-
Buying an installation for preparing demineralised water	600	600	-	-
Buying and mounting an oven for securing float glass	29,000	29,000	-	-
Modernisation and rehabilitation of a production hall, organising home appliance float securitized windows, buying and mounting warm air generator and A/C installations	8,000	8,000	-	-
Buying of an oven for securitizing curved glass and auto rear glass, including 3.2mm thick glass	130,000	-	130,000	-
TOTAL	174,400	44,400	130,000	-

Source: the Restructuring Programme at SC GEROM SA Buzau

(49) Through the technical and technological investments included in the restructuring programme, through the re-evaluation of the capacities and the endowment with modernised specific machines, the achievement of mechanical welfare objectives is followed, and also the growth of the productivity of labour, the reducing of energy consumption, all these having the effect of reducing losses and increase of operating profit.

5.3. Restructuring measures concerning the environmental protection

(50) Environmental protection restructuring measures are in total amount of ROL 9,200 million, from which ROL 8,000 million are supported by the Buyer, according to the contract of shares purchase and sale and are meant to achieve the environmental obligations stipulated in accordance with the environmental notices.

Table nr. 7 Measures regarding the environmental restructuring -ROL million-

Measure	Implementation Effort	Financing		
		Own Sources	Buyer's Sources	State Aid
Ordering and realising the level II environmental audit	200	200	-	-
Treatment of the sand waste resulted from past and deactivated actions	8,000	-	8,000	-
Buying a Euro forklift in order to ensure the appropriate climate and the alignment with the European rules regarding gas emissions	1,000	1,000	-	-
TOTAL	9,200	1,200	8,000	-

Source: The Restructuring Programme of SC GEROM SA Buzau

5.4. Financial Restructuring

(51) 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.

(52) One of the financial restructuring measures is represented by the support granted by the state, through the foregoing of the budgetary creditors from certain revenues and the granting of payment facilities (annulments and rescheduling of debts) in total amount of ROL 151,958.7 million, as they have been detailed in paragraphs (4) and (5). The facilities are granted in order to make the company viable.

(53) Also, the company will sell assets and industrial machines in order to obtain resources necessary to complete the financial restructuring effort. The dismantling of equipments aims for the correlation of the production volume with the sales volume and the reduction of internal costs generated by their maintenance and repairs. Fixed assets are sold as scrap iron to authorised firms. The implementation cost of the measure is ROL 274 million borne by the own resources of the beneficiary, obtaining ROL 10,640.2 million.

(54) 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 funds, that ensures the technological and environmental investments necessary for carrying out the activity.

(55) 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, the 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.

(56) The financial restructuring includes the following measures:

Table nr. 8. Financial restructuring measures

-ROL million-

Measure	Implementation Effort	Financing		
		Own Sources	Buyer's Sources	State Aid
Annulment and rescheduling of debts	151,958.7	-	-	151,958.7
Selling fixed assets and recoverable materials (scrap, waste thread)	274	274	-	-
TOTAL	152,232.7	274	-	151,958.7

Source: The Restructuring Programme of SC GEROM SA Buzau

6. STATE AID ASSESSMENT- ARE THE MEASURES STATE AID?

(57) 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 favouring certain undertakings, the production of certain goods or the provision of certain services or affects the trade between Romania and the Member States of the European Union, being considered incompatible with a normal competitive environment.

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

(59) 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 SC GEROM SA. Thus, the financial support granted to SC GEROM SA has a selective character.

(60) By granting financial support measures, is granting an economic advantage in favor of SC GEROM 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, the company gets an advantage, as compared to its competitors.

(61) The selective nature of the support measures granted to the beneficiary, SC GEROM 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 GEROM 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.

(62) AVAS underlined that the privatisation process was carried out through an open and transparent tender. All potential bidders had enough time to perform an adequate assessment of the company to substantiate their offers. In the end, SC GEROM SA was sold to the investor that submitted the best purchase offer.

(63) However, as previously mentioned, the Competition Council notes that the privatisation process was accompanied by negotiations regarding the price and the level of investments. Thus, the sell was subject to the implementation of certain technological modernisation measures and carrying out environmental compliance investments.

(64) The price paid by the buyer for purchasing 86.21% of the company's social capital is ROL 47,156 mil. This value is much lower than the level of the incentives granted at the company's privatisation – ROL 151,958.7 mil.

(65) Also, AVAS informed the Competition Council that a comparative assessment between the company's liquidation cost and its privatisation cost was not carried out before privatisation. Taking into consideration the social effects that would have been generated by the workforce lay off in case of liquidation, the State acted directly towards the company's privatisation, assuming the responsibility of granting incentives in case the privatisation was completed.

(66) Having in view the aforesaid, the Competition Council considers that there are insufficient arguments to support the enforcement of the private prudent investor principle through the privatisation of GEROM.

(67) As a conclusion, the financial support measures are considered state aid and shall be subject to the Law no. 143/1999 on state aid with the subsequent modifications and completions.

7. COMPATIBILITY WITH THE STATE AID LEGAL BASE

(68) 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.

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

(70) The restructuring aid is based on a feasible, coherent and far-reaching plan to restore the 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.

(71) The Competition Council assesses the state aid granted to SC GEROM 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.

8. CRITERIA TO BE FULFILLED FOR GRANTING STATE AID FOR RESTRUCTURING

(72) The state aid granted for SC GEROM SA is being considered individual state aid and is granted for the purpose of restructuring, on the basis of a restructuring program, elaborated by the company with the Buyer and AVAS, totally assumed by the new major shareholder of the company, which has as principal objective restoring the viability of the company at the end of the implementation period. According to the shares sale-purchase contract, the investor assumes a contribution of ROL 138,000 million to realize the restructuring program of SC GEROM SA.

(73) Thus, the Competition Council will assess the state aid granted to SC GEROM SA 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:

- eligibility of the company: firm in difficulty;
- 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.

8.1. THE ELIGIBILITY OF S.C. GEROM SA BUZAU – FIRM IN DIFFICULTY

(74) 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.

(75) 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.

(76) Thus, the Competition Council notes that, in case of SC GEROM SA Buzau, according to the balance sheets prepared in accordance with IAS, the company recorded a total loss of its own capital during a single year, reaching a negative value of ROL 42,843 mil at the beginning of 2002, compared to the positive value of ROL 14,998 mil. registered in 2001. The analysis of the evolution within the period 1999-2001 of several economic and financial indicators shows the increase of losses (from ROL 6,492 mil. to ROL 58,199 mil.), the decrease of turnover in comparable prices (from ROL 119,357 mil. to 73,135 ROL mil.), increase of inventories (from ROL 29,953 mil. to 32,391 ROL mil.), increase of debts (from ROL 117,388 mil. to ROL 186,979 mil.) and financial burden indicates the difficult situation the company was in at the moment of the privatization.

(77) Thus, the Competition Council concludes that the condition stated in article 2 (2) of the Regulation is fulfilled, according to which SC GEROM SA is considered “firm in difficulty”.

8.2. RESTORING THE LONG TERM VIABILITY OF THE COMPANY

(78) Difficulties faced by SC GEROM SA 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.

(79) At the end of 2002 SC GEROM SA was privatised. In order to overcome the financial difficulties, the company prepared together with the Buyer (SC IAMSAT

PRODCONSTRUCT SA Pitesti) and AVAS a restructuring program for the period 2003-2007. The measures included in the restructuring plan of GEROM SA were presented in Chapter 5.

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

(81) 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.

(82) The restructuring plan at SC GEROM SA starts from the technical-economical data that reflect the activity of the company before the privatization. This plan was achieved after an analysis of the weaknesses and the strengths of the company and the circumstances that lead to the difficulties of the company.

(83) The strategy of SC GEROM SA aims to preserve the strengths, such as: the experience in this field of work, experienced employees and highly qualified in producing auto glass and home appliances glass, the existence of a marketing strategy, the flexibility of the production, the diversified range of clients.

(84) At the same time, the strategy of SC GEROM SA aims to limit and counteract the company's weaknesses, such as: the limited access of the firm to well-known producers because of the poor situation before the privatization; the long distance to clients, the advanced worn out ratio of the technical park.

(85) As part of the Restructuring Plan, the company will give up some loss making activities e.g. the glass and bricks ovens will be closed no longer efficient and have important energy consumption.

(86) According to the above, the objectives of the proposed plan should make possible the viability following the implementation of the restructuring plan, such as:

- achievement of operational equilibrium, in order to make profit;
- revamping and modernisation of the existing technologies, according to the investment assumed program;
- efficiency of the activity by reducing costs;
- increase of labour productivity through the restructuring of activity and the production flow;

- improvement of labour conditions for all employees;
- increase of capacity utilisation ratio for all production capacities;
- intensification of receivables collection in the same time with the decrease of arrears;
- complying with international standards on environmental protection and the total elimination of polluting factors produced by the company.

(87) The enforcement of the measures provisioned by the restructuring plan is foreseen to improve the financial - economic indicators in the period 2003-2007, as shown in the table below. The company and the Buyer, as well as the State, through facilities granted to the company for payment of budgetary obligations, will contribute to this enforcement.

Table no. 9 The stipulated evolution for the economic- financial indicators, following the application of the restructuring measures

-ROL million-						
No.	Indicator	2003	2004	2005	2006	2007
1.	Turnover	187,350	230,500	240,000	255,000	280,000
2.	Total income:	190,000	249,910	243,000	258,000	283,000
	- Operational income	188,000	23,200	240,000	255,000	280,000
	- Financial income	2,000	3,000	3,000	3,000	3,000
	- Extraordinary income	-	-	-	-	-
3.	Total expenses:	185,000	224,400	229,700	244,000	267,900
	- Operational expenses	182,000	219,900	226,500	240,500	263,900
	- Financial Expenses	3,000	4,500	3,200	3,500	4,000
	- Extraordinary expenses	-	-	-	-	-
4.	Gross profit(+)/Loss(-)	5,000	10,600	13,300	14,000	15,100
5.	Net Profit (+)/Loss(-)	3,750	7,950	11,170	11,760	12,680

Source: The Restructuring Programme at SC GEROM SA

(88) Thus, compared with 2003, the main economical indicators present the following evolution:

- Total revenues and turnover have an ascending trend;
- Operating expenses assure an ascending trend through the proposed restructuring program, in accordance with company activities development in terms of improving work productivity and technological modernization;
- Analyzing the economical-financial indicators, we can observe a correlation of indicators with the company's concrete situation, a realistic and sustainable planning of fabrication program, to assure the company revitalization.

The data from the balance sheet themselves prove the company's positive evolution. Therefore, at the end of 2004, the company succeeded to recover from the delays from the previous years, obtaining a profit of ROL 11,044 mil., related to a turnover of ROL 245,354 mil. – having a value approx. equal to the estimations made at the beginning of

the program's implementation – due to the restructuring measures already implemented which led to the improvement of the capacity and activity's efficiency.

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

Table no. 10 Economical - financial target indicators

Nr.crt	Indicators	UM	2003	2004	2005	2006	2007
1	Intermediate liquidity		0.74	1.1	0.76	0.92	1.05
2	Inventory turnover	Days	69.5	65.9	62	60.7	51.4
3	Debt payment period	Days	92.2	65.2	79.5	69.2	60.4
4	Indebtedness ratio	%	37.2	28.2	33.3	28.7	25.6
5	The arrears percentage	%	13.6	0.71	-	-	-
6	Return on assets	%	2.1	4.2	5.3	5.3	5.5
7	Return on equity	%	2.9	5.3	7.0	6.9	6.9
8	Expenses for ROL 1000 operating revenues	%	968.0	947.8	943.8	943.1	942.5

Source: Restructuring program of SC GEROM SA Buzau

(90) The implementation of the proposed restructuring plan will lead to the restoration of the long term viability of SC GEROM SA, viability which results mainly from internal measures, contained in the restructuring plan and is not based on external factors such as the prices' fluctuation and market demand. The implementation of the restructuring plan will assure a massive change which will permit, after finalizing the restructuring the full coverage of costs and competition with its own powers on the free market.

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

(91) According to the stipulations of the Regulation regarding state aid for rescuing and restructuring firms in difficulty, in view of minimizing the negative effects due the state aid on competition on relevant markets, compensatory measures are necessary. These measures will be proportionate with the distorting effects due the state aid and, especially, with the size and relative importance of the company on relevant markets. The reduction of the company's presence on the market is established based on a study market, attached to the notification, as well as any other relevant information and will be included in the restructuring plan.

(92) SC GEROM SA Buzau has a 26% share on the market of first assembly auto glass and a share of 38% for home appliance devices glass. According to the provisions of art. 14 from the Regulation on state aid for the rescue and restructuring of firms in difficulty the Competition Council considers that in the case of SC GEROM SA given the size and the relative importance of the company on the affected markets reductions of

production capacities are required proportionate with the distorting effects of the state aid on competition.

(93) The measures that will be taken by the company until the end of the restructuring period in view of avoiding the distortion of the competition consist in irreversible reducing of the viable production capacities, through the of:

- the horizontal Glasstech oven (2006) ;
- the vertical SEK oven (2006) ;
- the vertical oven for securitizing curved glass (2007).

The only operational ovens will remain the modern securitizing ovens: one for float glass and the second for curved glass for automobile.

(94) As a result of the decreasing activity, a significant number of equipments which contribute at the achievement of the main object of activity of the company will be dismantled. These fixed assets consist of equipments and machines, such as: oven rolls for the Glasstech oven, electric cables, engines etc.

(95) The irreversible reductions of viable production capacities, by dismantling them, will reduce, until 2007, the overall production capacity existing in 2003 by 25.41% on each market where the company participates.

(96) Through the restructuring program SC GEROM SA does not increase its market share and only intends to maintain the market segment where the company actually activates.

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

(98) After the application of the measures from the restructuring plan, the production capacities and their utilization ratio are as follows:

Table no. 11 Utilization ratio of production capacities in 2003 – 2007 MU sq.m/year

Capacity name	2003		2004		2005		2006		2007	
	Functioning (thousand meters)	Utilization ratio (%)	Functioning (thousand meters)	Utilization ratio (%)	Functioning (thousand meters)	Utilization ratio (%)	Functioning (thousand meters)	Utilization ratio (%)	Functioning (thousand meters)	Utilization ratio (%)
Glass production installations of different technologies	925	34.2	900	42.0	850	49.0	730	72.5	690	81.0

for automobiles and home appliances										
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Source: Supplementary information.

(99) On the basis of the restructuring program, SC GEROM SA intends to improve the utilization ratio of the production capacities. Thus, the utilization rate of the production capacities will rise compared 2003 (respectively from the beginning of the restructuring program) reaching 81% during 2007, on condition that the company committed to total and irreversible reduction of production capacities by 25.41%.

(100) Given the above-mentioned, the Competition Council concludes that the state aid will be used only for restore the company's viability not allowing the beneficiary, during the restructuring plan application, to extend its production capacities.

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

(101) 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.

(102) 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 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.

(103) The total cost of the restructuring of S.C. GEROM S.A is of ROL 342,069.9 million and is composed of:

- Organizational cost of restructuring	ROL 6,237.2 million;
- Technological cost of restructuring	ROL 174,400.0 million;
- Environmental cost of restructuring	ROL 9,200.0 million;
- Financial cost of restructuring	ROL 152,232.7 million.

(104) From the restructuring cost of ROL 342,069.9 million, 15.24% will be financed from the beneficiary's own resources, 40.34% from own sources of the buyer and 44.42% from financial support granted by the state.

(105) The own real contribution of the beneficiary of ROL 190,111.2 million represents 55.58% of the total restructuring costs and is assured by:

- the contribution assumed by the investor at privatization ROL 138,000 million;
- banks credits ROL 41,471 million;
- sale of fixed assets and recovered materials ROL 10,640.2 million

(106) According to art. 15 from the Regulation, the state aid level has to be strictly limited to the minimum necessary costs for restructuring to permit the restructuring in terms of the existing financial resources of the company, of its shareholders, or of its group of which the company is a part of. In the case of S.C. GEROM S.A., the intensity of the state aid, computed as a ratio between the value of the state aid and the total cost of restructuring, has a value of 44.42%.

(107) Under these conditions, the Competition Council considers significant the beneficiary's contribution of 55.58% to the implementation of the restructuring plan, proving the confidence in the practical value of restructuring, according to the existent financial resources of the company and the fact that this amount and the intensity of the state aid was strictly limited to permit the restructuring in accordance with the existent financial resources of the company and of the major shareholder. This way, it is avoided the danger that the company would receive a surplus of liquidity which could be used for other aggressive activities distorting the market.

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

(108) SC GEROM SA Buzau 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.

8.6. MEMBERSHIP OF A GROUP OF COMPANIES

(109) 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.

(110) Fiscal facilities granted at the privatization of S.C. GEROM S.A Buzau 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 S.C. GEROM S.A itself.

(111) From analyzing data comprised in the balance sheets of the companies which are part of the group, at the moment of privatization of GEROM, it is assessed that the financial resources disposed of by these companies are limited, being designated for their current activities. Thus, as shown at paragraph no. 25 of the present decision, the cumulative profit of all these companies is of ROL 63,427.1 million, much to small to

cover S.C. GEROM S.A.' debts and to help it to recover, registering in the same time total debts of ROL 868,523.2 mil.

(112) In these conditions, the Competition Council considers that the major shareholders can not face both the financial difficulties of S.C. GEROM S.A Buzau and the restructuring of the company without a consistent intervention from state, the company's debts to the state budget, AVAS and the utilities providers amounting to ROL 151,958.7 million. The investor submitted a contribution to achieve the restructuring program, respectively the financing of organizational, technical, technological and environmental restructuring, in amount of ROL 138,000 million. In comparison with the financial resources of the group, which registered a ROL 63,427.1 mil profit at the end of 2002, but also debts towards different creditors amounting ROL 868,523.2 mil., this contribution is significant.

(113) From the information presented above, the Competition Council concludes that the group in which S.C. GEROM S.A. became a part when it was privatized, don't not have the financial possibility to solve the difficulties which the company is facing with, meaning to cover the debts to the Romanian state in amount of ROL 151,958.7 million. In addition, taking into consideration that the investor engaged to contribute to the financing of the program for restructuring with ROL 138,000 million (which is more than double comparing to the group's profit), it may be considered that the investor used its own financial resources to support the economic turnaround and the restructuring of S.C. GEROM S.A.

8.7. MONITORING AND ANNUAL REPORTING

(114) 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.

(115) 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.

9. CONCLUSIONS

(116) Taking into consideration the above presented grounds, the Competition Council finds that the individual state aid granted to SC GEROM 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 measures notified by the Authority for the Recovery of State Assets (A.V.A.S.) for SC GEROM SA Buzau represent state aid for within the meaning of art. 2 paragraph (1) of Law no. 143/1999 on State aid, as completed and amended.

Art. 2. On the grounds of art. 12 paragraph (2) letter c) corroborated with art. 14 paragraph (1) letter e) of the Law no. 143/1999 as completed and amended, the state aid for restructuring which is to be granted to SC GEROM SA Buzau for its privatization under the observance of the provisions at art. 3 and 4 in this Decision, it is hereby authorized.

Art.3. The company is obliged to completely implement the submitted restructuring plan.

Art.4. The company will reduce its production capacity until the year 2007 according to the submitted Restructuring Program.

Art.5. In case of non-observance of the conditions of this decision, the stipulation of art. 13 of the Law no. 143/1999 on State Aid, as completed and amended will be applied.

Art.6. The value of the granted state aid amounts at ROL 151,958,673,094, respectively RON 15,195,867.3.

Art.7. This Decision comes into force on the date of its communication.

Art.8. In accordance with the dispositions in art. 24 of the Law no. 143/1999, as modified and completed, the Authority for State Assets Recovery (A.V.A.S.) shall submit to the Competition Council information on the granted state aid in order to keep their proper inventory and monitoring. Also, the annual reports regarding the implementation of the restructuring plan A.V.A.S. shall be submitted to the Competition Council. The first Report is to be submitted within 6 months from the decision issuance date. The next periodic reports will contain the necessary data regarding the physical and value stages of the application of the restructuring plan. It will be also, reported the information regarding the applying of the compensatory measures regarding the reduction of the production capacities imposed by the present Decision.

Art.9. According to the provisions of art. 29 of the Law no. 143/1999 on the state aid, as modified and completed, this Decision can be appealed by the interested parties at the Bucharest Court of Appeals, Administrative Litigation Section, within 30 days from its communication date.

Art.10. The General Secretariat of the Competition Council shall communicate this decision to:

- AVAS, str. 50 Cpt. Av. Alexandru Serbanescu St., sector 1, Bucharest;
- S.C. GEROM S.A., 1-3 Industriei St., Buzau, Buzau County.

Art.11. The General Secretariat and the State aid Authorization Department of the Competition Council shall act in pursuance of this Decision.